

PUBLIC LAW BOARD NO. 2960

AWARD NO. 104
CASE NO. 150

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension and disqualification as a foreman assessed Foreman M. P. Cunningham for-allegedly failing to properly protect track (flagging procedure) was without just and sufficient cause and on the basis of an unproven charge. (Organization File 3D-4588; Carrier File 81-84-205-D).
- (2) Claimant M. P. Cunningham shall be allowed the remedy prescribed in Rule 19 (d).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On May 22, 1984, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your failure to properly perform your duties when you failed to properly protect track work under your supervisor on May 18, 1984 while you were employed as surfacing gang foreman in the limestone area of the St. Louis subdivision."

Subsequently, the Carrier assessed the discipline now on appeal before the Board.

After reviewing the record, it is the conclusion of the Board that there is substantial evidence to support the charge against the Claimant.

The Carrier's operating Rule E99(c), clearly requires that under the circumstances present on the day in question, the Claimant, as foreman, was required to place, or have placed, a red flag, reflector or light not less than 800 feet from the place the crew was occupying the track, and a red-yellow flag two miles from that point.

There was credible testimony that there were no flags placed as required by the rule. Moreover, the testimony of the Claimant failed to establish that he, in fact, had complied with the rule.


Regarding the appropriateness of the discipline, the seriousness of the offense cannot be ignored. The basic safety of one's crew is of utmost importance. The rule in question here is designed to provide protection for the crew, and failure to comply places employees at great risk. Thus, the Carrier's exercise of its disciplinary discretion, in view of the willful violation of the rule, is not unreasonable.

PLB-2960

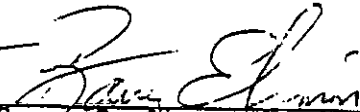
Award No. 104

AWARD:

The Claim is denied.


Gil Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated: Jan 14, 1986