

PUBLIC LAW BOARD NO. 2960

AWARD NO. 131
CASE NO. 175

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 sixty (60) day suspension assessed Trackman L. Glover for alleged failure to properly and accurately report an injury was unsupported, capricious and totally improper and on the basis of an unjust hearing. [Organization File 9D-5088; Carrier File 81-85-77-D]

(2) Claimant shall be allowed the remedy as 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 October 26, 1984 R. H. Henke Assistant Division Manager - Engineering - sent the following notice to the Claimant:

"You are directed to appear for a formal investigation as indicated below:

DATE: Wednesday, October 31, 1984

TIME: 2:00 P.M.

PLACE: Conference Room, Engineering Department,
Second Floor, Administration Building, Proviso Yard.

CHARGE: To determine your responsibility, if any, in connection with not properly and accurately reporting your alleged injury on October 22, 1984 at approximately 10:00 a.m. while employed as a Trackman on the Panel Building Gang at Proviso.

You may be accompanied by one or more person and/or representatives of your own choosing subject to the provisions of applicable scheduled rules and agreements; and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

The investigation was held on November 1, 1984. Appearing as witnesses were the Claimant, R. H. Henke, and T. A. Henning, Roadmaster. On November 7, 1984 Mr. Henke issued the discipline now on appeal before the Board.

The Board is confronted at the outset with a procedural argument which must be considered prior to the merits. The Organization contend the Claimant's right to a fair hearing was violated because Mr. Henke acted impermissibly in a multiplicity of roles.

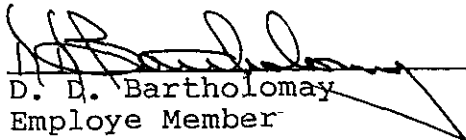
We have reviewed the transcript and must agree with the Organization that the discipline must be voided and cannot be considered on its merits. Mr. Henke was clearly a material witness and it was clearly improper for him to act in this role as well as the officer who issued the discipline. This violates the requisite objectivity that an officer issuing discipline must have. We note a similar conclusion was reached in Award 73 of this Board.

AWARD:

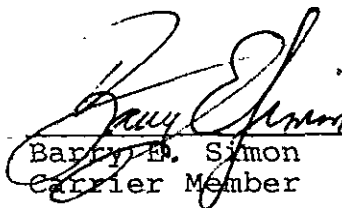
The Claim is sustained.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



Barry E. Simon
Carrier Member

Dated:

