

PUBLIC LAW BOARD NO. 2960

AWARD NO. 89
CASE NO. 128

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 assessed Machine Operator L. T. Rank for allegedly not performing his duties in an efficient, productive, alert and attentive manner on June 28, 1983 was without just and sufficient cause and on the basis of unproven charges. (Organization File 6D-3868; Carrier File 81-83-192D).
- (2) The Carrier violated Rule 19 and the February 21, 1980 Letter of Understanding by not furnishing a copy of the investigation transcript to the General Chairman within the prescribed ten (10) day limit.
- (3) Because of either or both of Parts (1) and (2), Machine Operator L.T. Rank 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 July 6, 1983, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility for your failure to properly perform your duties as Machine Operator in an efficient, productive, alert and attentive manner on Tuesday, June 28, 1983, from 8:25 a.m. to 12:36 p.m., near St. Onge, South Dakota, while assigned to Speed Swing on the crossing gang."

Subsequent to the investigation, the Carrier assessed the discipline now on appeal before the Board.

The Organization first raises a procedural issue. They claim the discipline should be overturned because the Carrier failed to furnish the General Chairman a copy of the transcript within ten (10) days of the investigation as required by Rule 19.

With respect to the procedural issue, the Board has before held that time limit provisions should be enforced as written. However, in this case, we are unable to conclude that the transcripts weren't mailed within the time limit. The Organization has merely asserted that the transcript wasn't mailed. The Board needs more than assertion on which to base a default award under Rule 19.

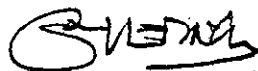
With respect to the merits, it is the conclusion of the Board that there is substantial evidence to support the finding of the Carrier. The record convincingly established that the Claimant, without good cause, failed to perform any work during the times in question. The Claimant on the date in question was assigned as the operator of the speed swing. He was observed by two special agents between 8:25 a.m. and 12:36 p.m. They reported that the Claimant performed no work; for the most part he sat in the machine either doing nothing, reading or resting with his head on his forearm. At one point he left the machine and played with matches burning ants in an ant hill.

When these observations are weighed against the Claimant's defense, the Carrier's conclusion cannot be said to be in error. The Claimant's defense falls far short of adequately justifying his inactivity during the period in question. While it was established that he was expecting a mechanic to come out to look at his machine (who never appeared), it was perfectly clear that the machine was fully operable. The machine was also equipped with a radio. While there was a question as to whether it was receiving signals properly, it was transmitting. Moreover, the Claimant thought but wasn't sure that he tried to contact the mechanic. He was even somewhat equivocal about attempting to contact the track foreman. The Claimant, when asked if he tried to contact the foreman, indicated "I believe I tried to get ahold of him. I'm not sure...."

Accordingly, the Carrier has established that discipline was appropriate. In addition, we are satisfied that a 30-day suspension is not arbitrary or capricious.

AWARD

In view of the foregoing, the Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: May 8, 1985