

PUBLIC LAW BOARD NO. 1844

AWARD NO. 29

CASE No. 33

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The 15 day suspension of Track Foreman W.L. Krause and disqualification and loss of seniority as Track Supervisor, Foreman and Assistant Foreman was based upon unproven charges.
- (2) Mr. Krause now be returned to his former position with all rights unimpaired and paid for all time lost as a result of his improper dismissal.

OPINION OF BOARD:

At the time this claim arose Claimant was a regularly assigned Section Foreman near Barr, Illinois, on the St. Louis Subdivision of the Illinois Division. On the night of May 2, 1977 he and his gang changed out a defective rail near MP 76 on Carrier's main line, about 15 miles south of Barr. Three days later on May 5, 1977, Roadmaster Hegelund made a walking inspection of the area and noticed a recently changed defective rail. Written work reports showed that this was the replacement rail installed by Claimant on May 2, 1977. The Roadmaster discussed the situation with Claimant at the time and verified that he had replaced the rail. Thereafter on May 13, 1977 Claimant attended a formal investigation into charges dated May 10, 1977 reading in pertinent part as follows:

Your responsibility, if any, in connection with changing a broken rail at MP 76.1 on May 2, 1977 and replacing the rail with a piece of scrap rail.

We have reviewed the entire record of this case, including the transcript of investigation. We find that Claimant was afforded all of the procedural due process to which he was entitled under the Agreement. We are persuaded that the charges are supported by substantial probative evidence on the record. Specifically, we are convinced that the Carrier had ample evidence from which to conclude that Claimant used as a replacement rail a piece of scrap rail with a split end, which was marked in red paint with the word "scrap" on both sides and also marked with chalk from the UX or rail detector car. Claimant's assertions that he did not notice the markings because he was working at night do not excuse such negligence. If anything, he should have exercised greater care to inspect the rail during a night time installation.

The imposition of discipline is warranted for such proven negligence and dereliction of duty. Nor can we conclude that the penalty imposed is arbitrary, unreasonable, or capricious. Accordingly, the fifteen day actual suspension and disqualification shall stand. We have dealt with a collateral effect of this fifteen day actual suspension in our Award No. 28 (Case No. 35). But the voiding of the activated deferred suspension in Award No. 28 does not invalidate the fifteen day suspension and disqualification for the offense of May 2, 1977.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

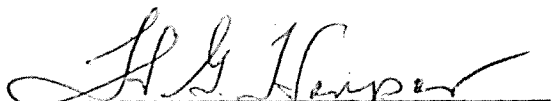
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

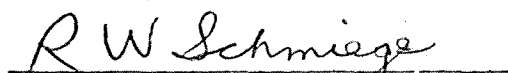
2. that the Baord has jurisdiction over the dispute involved herein;
and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec. 6, 1978