

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

- (1) The thirty (30) day suspension of Machine Operator PJ Greco was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D-11-24-31).
- (2) Machine Operator PJ Greco be compensated for all time lost and the discipline be stricken from his record.

OPINION OF BOARD:

Claimant in this case was a regularly assigned machine operator performing work with a Junior Electronics Tamper on the Waterloo Sub-division of Carrier's Central Division. On June 28, 1977, he was located about 1.5 miles north of Reinbeck, Iowa, and was assigned to work with a trackman from 7:30 A.M. to 4:00 P.M. Carrier had furnished the employee with a line-up, flagging equipment and a two-way radio for his use. The train line-up indicated that Extra 4520 was scheduled to leave Marshalltown (south of Reinbeck) at 7:30 A.M. At or about 9:00 A.M. Agent Williams (Reinbeck) notified Mr. Greco that Extra 4520 was "coming down Lincoln Hill" (about 7.1 miles south of Reinbeck). Mr. Williams then notified Extra 4520 that Claimant was going to clear at Hicks (about 4.5 miles north of Reinbeck). When Claimant overheard Agent Williams' communication to the

train he tried to re-contact the agent to advise that they intended to clear at Reinbeck, not at Hicks. Claimant and the trackman then continued south toward Reinbeck in the direction of the northbound train. They were approximately 150 feet from the switch when Extra 4520 collided with the tamper. On July 1, 1977 Carrier advised Claimant to appear for formal investigation on July 6, 1977. On July 5, 1977 the investigation was postponed to August 2, 1977. As a result of the investigation Claimant received a 30-day suspension.

The Organization alleges that the notice of hearing was not specific enough to meet the requirements of Rule 19(a) of the prevailing Agreement. Rule 19(a) states in relevant part: "Prior to the hearing the employee will be notified in writing of the precise charge against him...." Further, the Organization maintains that the Carrier had condoned a practice of not setting up flags or torpedoes when it might slow production and that no "Y" order had been given. Therefore, it is argued, "Claimant was not operating the machine in a manner any differently than on preceding work days...", and should not be held culpable for the resulting collision. In addition, they maintain that Agent Williams is at least equally implicated because of the incorrect message he sent to Extra 4520 regarding the location of the tamper. Finally, the Organization proposes that even if, arguendo, Claimant is found at fault, the discipline imposed is excessive.

Carrier argues that Claimant's actions were negligent and in direct violation of Rule E-99. Rule E-99 states in pertinent part: "When a condition is found that may require trains to be stopped or to reduce speed, and no protection has been provided, immediate action must be taken to insure safety. Flagging is the first duty, and repair work must not be attempted until protection has been provided." Carrier maintains that once

Claimant had heard the incorrect message sent to the train and realized the train would be looking for him four miles north of where he was actually working, "he should have taken some action to avoid the collision." Finally, Carrier argues that "under the circumstances of this case," discipline imposed was not unreasonable.

Upon careful consideration of the record before us, we do not find that notice to Claimant was lacking in requisite specificity. Wording of the charge was sufficiently specific with respect to description of the incident under investigation to permit Mr. Greco to prepare an adequate defense. Further, we do not find that Agent Williams' transmission error exculpates Mr. Greco, since Claimant heard the error and thereby had sufficient information about the situation to take responsible action. The course of action taken by Claimant we find shows at best negligence and at worst disregard of safety procedures. Claimant admits to not knowing the range of his two-way radio. Even if (had he) eventually contacted the train to indicate his correct position, it might well have been too late to prevent the collision.

Once Claimant realized Extra 4520 had been misinformed it was his duty in accordance with Rule E-99 to immediately take prescribed safety precautions. Instead, Claimant headed south on the tamper and tried to race the northbound train to the switch at Reinbeck. Under the circumstances we find no reason to reverse or reduce the discipline. The Claim is therefore denied.

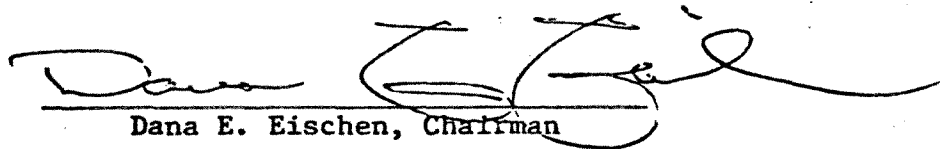
FINDINGS:

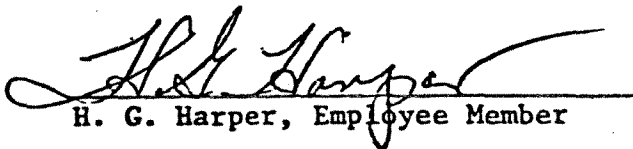
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

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 Board has jurisdiction over the dispute involved herein; and
3. that the claim is denied.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: May 17, 1979