

PUBLIC LAW BOARD NO. 1844

AWARD NO. 71

CASE NO. 80

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 ten (10) days actual suspension and sixty (60) days deferred suspension of Machine Operator D. L. Jewson was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D-11-8-500)
- (2) Machine Operator Jewson be compensated for all time lost during this seventy day period, the ten (10) days suspension be stricken from his record and the sixty (60) days deferred suspension be retracted due to violation referred to in part one (1) of claim.

OPINION OF BOARD:

In this claim, Machine Operator D. L. Jewson, received a ten (10) day actual suspension (which triggered a sixty (60) deferred suspension) for a total time off without pay of seventy (70) days. Following due notice and proper hearing, Carrier imposed the discipline upon Claimant for his "responsibility in connection with collision between Extra 6812 East (406) and Track Machinery at about 9:17 A.M., October 26, 1978 at about M.P. 47 on the Adams Subdivision".

The facts essentially are not contested on this record. It shows that on October 24, 1978 Claimant and the gang of which he was part were doing resurfacing work between M.P. 47 (West) and M.P. 44.5 (East) on the Wisconsin

Subdivision. The gang was working under a Form Y Train Order and Operating Rule E99(C):

E99(c). When a main track is to be obstructed or made impassible, a red flag by day and a red light or red reflector by night must be placed not less than 800 feet in advance of the obstructed or impassible track, and at a point two miles in advance of the red signal a yellow-red flag must be displayed.

The gang displayed a red-yellow board at M.P. 49 and a green board at M.P. 44.5. However, the gang placed the red board at M.P. 47 and then commenced work just inside the red board. Claimant's machine was the most eastward, located approximately 100-200 feet inside the red board. At about 9:15 A.M. westbound Train 406 came through the red board at speed and struck Claimant's machine and the other machines on the track.

An investigation into the responsibility of all employees involved establishes the negligence of the train crew and of the resurfacing gang foreman. However, the culpability of other employees who also were disciplined does not relieve Claimant of personal responsibility for his failure to comply with the clear requirements of Rule E99(C). We cannot conclude that Carrier acted unreasonably in the face of a proven violation of that Rule when it imposed progressive discipline to exercise the need for compliance with safety rules in dangerous operating situations. *TE*  
*aus*

#### FINDINGS:

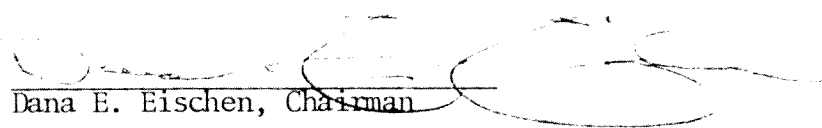
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

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 Agreement was not violated.

AWARD

Claim denied.

  
Dana E. Eischen, Chairman

  
H. G. Harper, Employee Member

  
R. W. Schmiede, Carrier Member

Date:

August 26, 1980