

PUBLIC LAW BOARD NO. 1844

AWARD NO. 74

CASE NO. 89

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 thirty (30) day suspension of Section Foreman Leon Walton, assessed by letter dated December 15, 1978, to be effective November 16, 1978, was without just and sufficient cause and on the basis of unproven charges. (System File D-11-3-287)
- (2) Section Foreman Walton be allowed compensation for all time lost and his personal record be cleared of the discipline assessed.

OPINION OF BOARD:

Claimant, a Section Foreman at DeWitt, Iowa, with fourteen years seniority, was held out of service without pay November 16, 1978 following a derailment of a train on November 15, 1978. After investigation on December 7, 1978 Claimant was found guilty on the following charge:

Your responsibility to properly secure switch at Mechanicsville, Iowa which resulted in the derailment of 14 cars of Extra No. 6883 East at approximately 3:14 P.M. on November 15, 1978.

In addition to Claimant, three other employees (the Assistant Section Foreman and two Welders) also were charged. As penalty for his alleged negligence, Claimant on December 15, 1978 was assessed a thirty (30) day actual suspension, counting time already served and he returned to work on December 18, 1978. The instant claim was timely filed protesting his discipline and denied at all levels of handling on the property.

Close examination of the record persuades us that this discipline was wrongly imposed. On the afternoon in question, Claimant and some fifteen other employees in various crafts were working at a derailment location repairing track and roadbed. At approximately 1:15 P.M., Roadmaster Knutsen arrived at the scene and supervised operations for the next couple of hours. Claimant and Assistant Section Foreman Mosley completed installing a switch on a switch stand under Knutsen's observation. Mr. Knutsen ascertained that the men did not have a switch lock but that they were aware of one in his truck. After Claimant and Mosley completed installing and testing the westbound switch under Knutsen's direct supervision, the Roadmaster directed two Welders at the scene to build up the point on that westbound switch. Knutsen then took Claimant and Mosley with him to work on the eastbound switch. The Welders spent some time building up and grinding the point, including throwing the switch to permit grinding and to test for fit. In the meantime, Claimant was working with the Roadmaster and others on the eastbound switch. At approximately 3:00 P.M., Claimant was sent away from the scene to get supplies. While he was gone, at approximately 3:15 P.M., a train passed over the westbound switch and derailed.

The record establishes clearly that the welding and grinding work was performed on the switch long after Claimant had completed his work. The welding crew manipulated that switch in the performance of their work. Any causal nexus leading to Claimant was broken by this intervening cause. Carrier erred in holding Claimant responsible for the switch not being locked at the time the train passed over it. The evidence clearly requires that the discipline be reversed.

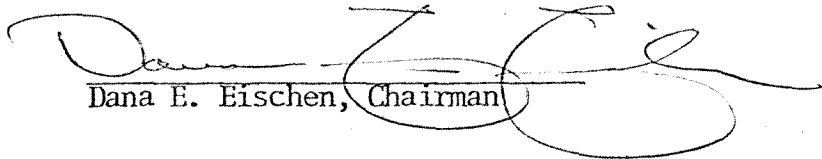
FINDINGS:

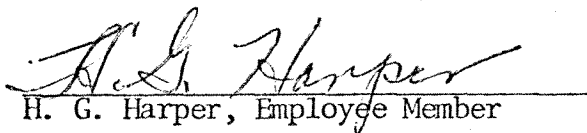
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

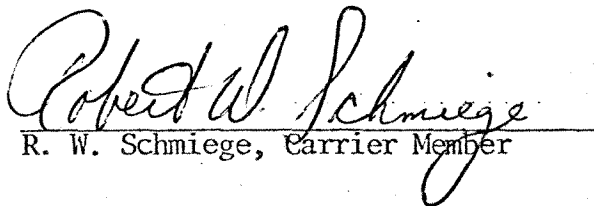
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was violated.

AWARD

Claim sustained. Carrier is directed to implemented this Award within thirty (30) days of issuance.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: August 26, 1980