

AWARD NO. 75

CASE NO. 90

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 Track Foreman W. A. Thompson was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D 11-8-494)
- (2) Track Foreman Thompson be allowed compensation for all time lost and his personal record be cleared of the discipline assessed.

OPINION OF BOARD:

Claimant was a Track Foreman at Madison, Wisconsin. In mid-October 1978 his direct supervisor was Trainmaster Mahuta, since Roadmaster Stern had been transferred but not yet replaced. On October 17, 1978 the Trainmaster instructed Claimant to clean and oil all switch points in the immediate vicinity of the Yard, pending further work assignment when the new Roadmaster came on duty. On the morning of October 18, 1978 the Trainmaster overheard switchmen complaining to the Yardmaster about the switches not being oiled. He located Claimant at a meeting of city officials discussing a road crossing and ordered him to report to the office at once. Upon his arrival, the Trainmaster asked Claimant why he had not oiled the switches as instructed. The Trainmaster testified that Claimant responded in words or substance: "God damn it, don't tell me I didn't oil those switches. All of those switches are oiled".

Claimant does not deny that he shouted and swore at his supervisor, but he does deny stating that he had oiled all of the switches. His recollection is that he told the Trainmaster that he had cleaned some of the switches and oiled those he had cleaned. Immediate inspection of the switches established that only a few had been cleaned and oiled while the switches most frequently used were rusty and full of sand.

On the basis of the foregoing evidence, Carrier found Claimant guilty of the following charge:

Your responsibility for your insubordination and lying to Trainmaster E. F. Mahuta at about 8:30 A.M. on Wednesday, October 17, 1978.

We have reviewed the transcript of proceeding and conclude that the charge of insubordination is established beyond reasonable doubt. With respect to the findings of culpability for lying, the evidence is conflicting. But upon review of the testimony we cannot conclude that Carrier acted unreasonably in crediting that of the Trainmaster. We find no basis upon which to set aside Carrier's decision concerning guilt and the penalty is not excessive in the circumstances. There is no showing of prejudice to Claimant in the typographical error concerning the date on the Notice of Charges. We shall deny the claim.

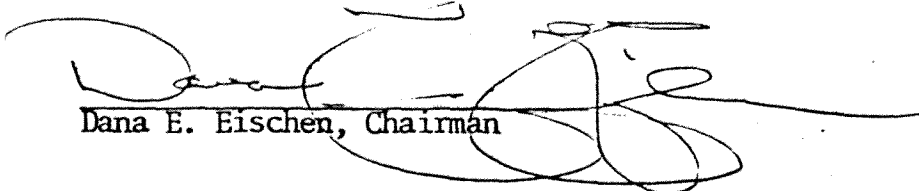
FINDINGS:

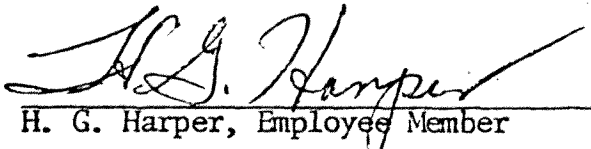
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

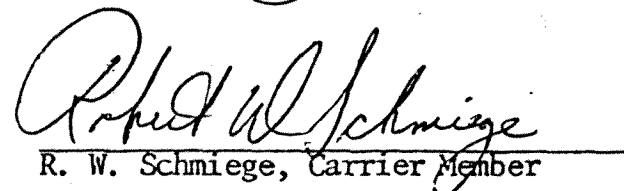
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

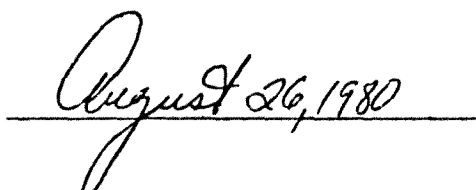
Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date:



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