

PUBLIC LAW BOARD NO. 1844

AWARD NO. 78

CASE NO. 93

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 discipline assessed Machine Operator P. Folsom of disqualification and loss of all machine operator rights on all Class A, B and C machines, and on all machines common to Track and B&B Departments was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D-11-1-406).
- (2) Machine Operator Folsom be reinstated as Machine Operator and reimbursed for all wages lost for violation referred to in part one (1) of claim.

OPINION OF BOARD:

Claimant was the regularly assigned operator of a Speed Swing, at South Pekin, Illinois. On March 13, 1979 that machine was found to be inoperable with extensive damage. Detailed inspection on March 20, 1979 indicated the damage was caused by lack of antifreeze in the cooling system water which froze, cracking the radiator. That March 20, 1979 inspection also revealed loose or missing bolts in the swing sprocket and motor mounts. Upon due notice and following proper adjournment, a hearing was held on March 30, 1979 on the following charge:

Your failure to properly maintain speed swing, System #17-1817, located at South Pekin, IL., which was assigned to you under Bulletin #87 dated July 1, 1977, and awarded to you July 14, 1977.

Subsequently, Claimant was notified by letter of April 5, 1979 that he had been found guilty as charged and assessed discipline as follows:

Disqualified on, and loss of, all machine operator rights on all Class A, B, and C machines, and on all machines common to Track and B&B Departments.

The Organization filed the present claim appealing the disqualifications on grounds that: (1) Carrier had not adduced sufficient evidence to prove that Claimant was culpable for the damage to the machine, and (2) arguendo the penalty of total disqualification was too harsh.

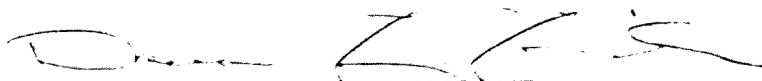
When Carrier disciplinary action is challenged under contract provisions like Rule 19, management has the burden of proving inter alia that a preponderance of the record evidence supports a finding of culpability. In the present case, Carrier has demonstrated persuasively that the machine damage was caused by someone leaving water in the cooling system without antifreeze during below-freezing temperatures. Claimant testified that the antifreeze level was tested in Fall 1978 at minus 23°, but thereafter he added water periodically. Claimant conceded that he did not add additional antifreeze even though he knew that he was diluting the antifreeze in the radiator to the point where it lost effectiveness. Rather, he claims that he drained the radiator each night and filled it each morning. He insists that someone else must have left water in the machine over the weekend of March 10-11, 1979. Even if arguendo Claimant's theory was persuasively demonstrated, his negligent failure to keep up the antifreeze protection was the ultimate cause for the machine being damaged. Given the clear breach of his maintenance duties on this machine, plus his unfavorable prior record, we find no basis to reverse Carrier's assessment of disqualification.

initial strain on Claimant's credibility, he initially testified that his failure to report for work March 26, 1979 was due to his being "still under the influence of a barbiturate" and that he "was not released from that drug until April 2." Later in the record Claimant testifies that he was in jail until April 3 and was released from the barbiturate on April 9.

It is apparent, therefore, that the reason for Claimant's failure to report for work on March 26, 1979 was his incarceration up to and including April 3, 1979. Claimant's failure to report caused the activation of the self-operating forfeiture in Rule 54. It is well established that arrest or incarceration can not excuse an employee's failure to protect his assignment. Awards 3-22383 and 3-22451.

AWARD

Claim denied.


Dana E. Eischen, Chairman


~~H. G. Harper~~, Employee Member


~~J. D. Crawford~~, Carrier Member

Date: April 2, 1981