

PUBLIC LAW BOARD NO. 2960

AWARD NO. 123
CASE NO. 167

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes
and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The forty five (45) day suspension assessed Machine Operator R. R. Scarberry was without just and sufficient cause and excessive.

(2) Claimant Scarberry shall be allowed the remedy as prescribed in Rule 19 (d).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On August 16, 1984, the Claimant was directed to attend an investigation. The notice read as follows:

"You are directed to appear for formal investigation as indicated below:

PLACE: Engineering Offices, 1937 Hull Avenue
Des Moines, Iowa

TIME: 9:00 A. M.

DATE: Monday, August 20, 1984

CHARGE: Your responsibility in connection with allowing an unauthorized person to ride in Company Vehicle #21-2821 at 9:20 a.m. on August 7th, 1984 at the intersection of a Delaware and Euclide Streets, Des Moines, Iowa, while employed as a System Machine Operator on the Central Division.

You may be accompanied by an employe and/or representative of your own choosing, subject to provisions of applicable rules in the Applicable Schedule, and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before the Board.

There is no question based on the record that the Claimant violated Rule 329 and Rule 1010 and Rule 6 which read:

"Rule 329: Unauthorized persons must not be permitted to ride on motorized shop or station equipment or machinery.

"Rule 1010: Work equipment must be used only in Company service. No person other than employees in the discharge of their duties will be permitted to ride upon or use this equipment, except non-employees may ride in connection with Company business when authorized by proper authority.

"Rule 6: Except in an emergency, no person except employees in the discharge of duty may ride in Company vehicles unless authorized, unless otherwise authorized by proper supervisory officer. No hitchhikers are to be transported."

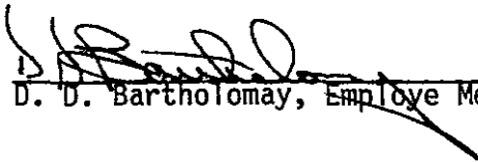
While some discipline would be appropriate, the Board cannot conclude that the penalty fits the crime. Forty-five days is grossly excessive given the nature of this offense. Nor does his past record justify such a stiff suspension. Ten days would be the maximum penalty justifiable under these circumstances.

AWARD:

The suspension is reduced to ten-day suspension and the Carrier is ordered to adjust his record accordingly and pay him for time lost between the 10 days suspension. The Carrier is ordered to comply within 30 days.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Sept 10, 1987