

PUBLIC LAW BOARD NO. 2960

AWARD NO. 73
CASE NO. 71

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension assessed D. L. Gates was without just and sufficient cause and in violation of the Agreement. (Organization File 9D-2435; Carrier File D-11-17-398).
- (2) Claimant D. L. Gates shall have his record cleared of the charge and compensated for all wage loss suffered.

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 September 17, 1981, the following notice issued by R. W. Berg, Assistant Division Manager - Engineering, was hand delivered to the Claimant:

"Date: Tuesday, September 22, 1981

Time: 3 PM

Place: Office of the Assistant Division Manager - Engineering
500 W. Madison Street, Room 411 CPT
Chicago, IL 60606

Charge: Your responsibility in connection with your violation of
Rule 13 and 14 of the General Regulations and Safety
Rules when you were observed reading a newspaper at
12:45 PM on Thursday, September 17, 1981."

The hearing was postponed twice and ultimately held on October 6, 1981.

The Carrier presented two witnesses, M. G. Arter and R. W. Berg.

On October 8, 1981, Mr. Berg issued the suspension now on appeal
before the Board.

The Organization raises a procedural issue regarding due process
which must be considered at the outset. They contend a fair hearing
was not granted because Mr. Berg acted as a witness and issued the
discipline.

This Board does not often give much weight to due process ar-
guments concerning multiple roles. Often such arguments concern one
individual issuing the charges, conducting the hearing, and issuing the
discipline. This type of situation is entirely different than the
instant situation. In this case, Mr. Berg not only acted as the
accuser and issued the discipline, but also testified as a witness. A
fair hearing dictates that the evidence be considered by a non-involved
independent officer of the Carrier. The Claimant is entitled to at
least this much. It is difficult to accept that a material witness can
review and issue discipline in an impartial way.

It is noted that in response to the Union's due process argument
at the first level, the Carrier stated that the discipline was issued
upon the recommendation of the hearing officer. However, it is also
noted that in subsequent appeals and in the Carrier's submission before

the Board this position was abandoned in the face of persistent assertions by the Union that Mr. Berg acted in multiple roles. Accordingly, little weight can be given to the position taken at the first appeal level.

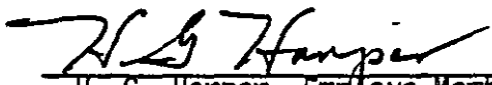
In view of the foregoing, the Claim is sustained. The Claimant is entitled to the remedy spelled out in Rule 19.

AWARD:

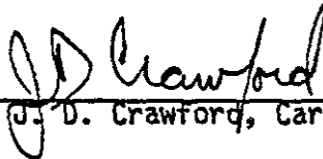
The Claim is sustained.



G. T. Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: _____

1/15/85