

PUBLIC LAW BOARD NO. 2960

AWARD NO. 82

CASE NO. 97

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 Machine Operator D. G. Weik for alleged violation of General Rule 36 when he was injured on March 2, 1982 was without just and sufficient cause and on the basis of an unproven charge. (Organization File 3D-2954; Carrier File D-11-1-477).
- (2) The Carrier violated Rule 19(b) and the February 21, 1980 Letter of Understanding when it failed to furnish the General Chairman, within the ten (10) day time limit, a copy of the discipline notice.
- (3) Machine Operator D. G. Weik shall be allowed the remedy 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 March 8, 1982, the Carrier advised the Claimant to attend an investigation. The letter read in pertinent part as follows:

"You are hereby directed to appear for a formal hearing as scheduled below:

DATE: March 12, 1982
TIME: 10:00 A.M.
PLACE: Office of Terminal Superintendent
Madison, Illinois
CHARGE: To determine the responsibility and develop
the facts in connection with personal injury
sustained by Mr. D. G. Weik, while installing
boom attachment on Speedswing at Madison,
Illinois on March 2, 1982.

"You may be accompanied by one or more persons of your own choosing, subject to the applicable terms of the scheduled agreement with your respective crafts, and you may, if you so desire, produce witnesses in your own behalf without expense to the Chicago & Northwestern System."

After postponement, the investigation was held on March 17, 1982. Subsequent thereto, the Carrier assessed the discipline now on appeal before the Board.

The Organization first argues that the discipline must be overturned because a copy of the discipline notice was not received by the General Chairman. The Carrier responded on the property that the notice was in fact mailed.

With respect to this procedural question, the Board notes there is nothing more than mere assertion offered to support the Union's factual contention. Under similar circumstances, the Board has stated that more than simple assertion is needed to sustain such a procedural argument.

With respect to the merits, the basic facts are not in dispute. Claimant Weik was employed as a Speed Swing Operator on the Carrier's Illinois Division at Madison, Illinois, with regularly assigned hours of 7:30 A.M. to 4:00 P.M., Monday through Friday. On March 2, 1982, while attempting to change the boom on his machine with the assistance

of a Scale and Work Equipment Mechanic and a 400 Truck Operator, the Claimant sustained a serious personal injury when the tip of his left index finger became caught in a clevis pin hole between the boom and machine frame and was severed from his hand. The Claimant was immediately escorted to St. Elizabeth Hospital in Granite City, where he received treatment for that injury. It is also noted that the truck operator was responding to directions given by the Claimant.

It is noted that the only Rule discussed at the investigation was Rule 6, which states:

"Using finger to determine if holes are in proper alignment is prohibited."

Thus, the Board must conclude that it was for this rule violation he was disciplined.

With this in mind, the Board can not conclude that the evidence supports that the Rule was violated. There is not enough evidence to convince the Board that the Claimant consciously put his finger in the hole of the frame. He testified, and there was no testimony to refute it, that his hand, being greasy, slipped and his finger went in the hole. While there may have been a safer course of action, the evidence does not support the precise charge. The Carrier did argue that certain portions of the Claimant's testimony were a tacit admission of guilt. However, the Board does not believe such strong inferences can be drawn from his testimony.

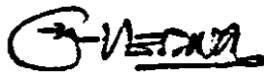
With respect to remedy, it is noted that on December 15, 1982, subsequent to the initial presentation of this claim on the property, Mr. Weik signed a release in connection with his personal injury settlement which states in pertinent part:

"I further do hereby release and forever discharge the Chicago and North Western Transportation Company, its officers, employees, agents, and assigns from any and all labor claims for remuneration of lost wages filed by me against the said Chicago and North Western Transportation Company during or subsequent to my employment with the Transportation Company and specifically as a result of an incident at or near Madison, Illinois on or about March 2, 1982."


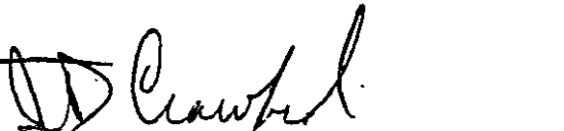
Therefore, the appropriate remedy is limited to the expungement of the discipline from his record.

AWARD:

The Claim is sustained to the extent indicated in the Opinion.



Gil Vernon, Chairman


H. G. Harper, Employee Member
D. Crawford, Carrier Member

Dated: 2/22/85