

PUBLIC LAW BOARD NO. 2960

AWARD NO. 90  
CASE NO. 129

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 dismissal of Trackman P. J. Metoyer for allegedly walking in front of a yard engine was without just and sufficient cause and on the basis of an unproven charge. (Organization File 9D-3950; Carrier File 81-84-18-D).
- (2) Trackman P. J. Metoyer 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 August 2, 1983, the Carrier directed the Claimant to attend an investigation on the following charge:

"To determine your responsibility in connection with your walking in front of a yard engine at California Avenue Coach Yard on August 1, 1983."

Subsequent to the investigation, the Carrier dismissed the Claimant. The letter of the dismissal was dated August 22, 1983. On March 23, 1984, the Carrier agreed to reinstate the Claimant without prejudice to his claim for time lost.

This case involves Rule M:

"Employees must exercise care to prevent injury to themselves or others.  
Employees are prohibited from occupying the roof of any car not equipped with a roof running board.  
Employees are prohibited from riding or walking on the roof of any moving car except when necessary during switching operations.  
Employees must not cross from the roof of one car to another car.  
Employees must inform themselves as to the location of structures or obstructions where clearances are close.  
Employees must expect the movement of trains, engines, cars or other equipment at any time, on any track, in either direction.  
Employees must not stand on the track in front of an approaching engine, car, or other moving equipment for the purpose of boarding the same."

The Carrier case rests largely on the testimony of Leonard Bailey, Trackman. He stated that the Claimant stepped in the middle of the tracks in question on which an engine was moving in the Claimant's direction. Bailey said he yelled three times to warn the Claimant but he did not respond until the engine blew its whistle. Bailey stated "He had his head - he was looking down. He was just standing there, looking down. I don't know what he was doing." It was also established that the locomotive passed by him 15 seconds later. The Claimant's basic defense is found in his contention that he saw the train coming.

This is a difficult case for the Carrier to sustain its burden of proof inasmuch as it is difficult to rebut the Claimant's state of mind. However, there is sufficient evidence that the Claimant was not in compliance with Rule M. The fact that he did not exercise sufficient care is evidenced by his admission that he put his foot over the rail and then looked to his left. Even ignoring Bailey's testimony this establishes that the Claimant was careless. Even apart from Rule M, we are taught even as young children to "look both ways" before crossing traffic. His culpability is more apparent when Bailey's testimony is noted, especially that the Claimant just stood there in the middle of the track with his head down and failed to heed several warnings. This, on the whole, is substantial evidence that he was inattentive to potential dangers around him and therefore careless to the extent of violating the Rule.

The remaining question is whether the discipline was appropriate. It is noted the offense is extremely serious. This is evidenced by the fact that the Claimant came close to receiving the ultimate in penalties from the engine. Even so, a discharge which was later revoked ordinarily would be excessive. However, the Claimant had received several other suspensions for misconduct. This serves to convince the Board that the penalty was appropriate and necessary to emphatically impress upon the Claimant the absolute necessity of compliance with all the rules of the Carrier.

AWARD:

In view of the foregoing, the Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: May 8, 1985