

PUBLIC LAW BOARD NO. 2960

AWARD NO. 92
CASE NO. 104

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 sixty (60) day suspension and disqualification as a Common Machine Operator assessed D. G. Weik was without just and sufficient cause and on the basis of an unproven charge and excessive. (Organization File 3D-3526; Carrier File 81-83-85-D).
- (2) 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 November 12, 1982, the Carrier directed the Claimant to attend an investigation on the following charge:

"To determine your responsibility for your failure to properly perform your duties and operating Boom Truck System #21-4501 in a unsafe manner when it came in contact with communication wire on Nov. 9, 1982 at approximately 10:30 A.M. at state Route 140."

Subsequent to the investigation the Carrier assessed the discipline now

on appeal before the Board.

A review of the transcript reveals more than substantial evidence to support the charge. The record shows that while the Claimant was in the process of operating the boom truck in question to unload material, the boom struck overhead wires. This caused the wires to fall and support pole to break off. The record shows also that the Claimant was aware of the wires as he himself had pointed their presence out to another employee (the section foreman). The Claimant also essentially argued with the section foreman's testimony that it was possible to make the move without striking the wires. Moreover, we are not impressed with the Claimant's explanation that he struck a sore finger which caused him to operate the boom erratically. This has no mitigating value. We cannot believe this prevented him from operating the equipment safely as he had worked for some time without reporting that the finger was a problem and without incident.

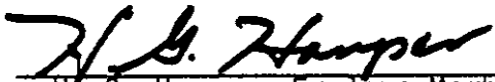
The Organization argues even if guilty, the discipline is excessive as 30 days is the normal penalty for this offense. However, the Claimant's past record bears out a basis for distinguishing his disciplinary penalty from that which might be given in a "normal" situation. The Claimant had a record tarnished several times (three to be exact) with incidents involving the improper and unsafe operation of equipment. Thus, an increasingly severe penalty was appropriate.

AWARD

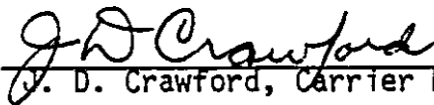
The Claim is denied.



G. Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: May 8, 1985