

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 123  
Docket No. 129

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Maintenance Gang Foreman R.J. Frazee was without just and sufficient cause. [Organization File 7SW-1217 D; Carrier File 81-87-180]
- (2) Claimant R.J. Frazee shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

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

On June 17, 1987, Claimant's gang was replacing switch ties near Sibley, Iowa. Later that day, a train derailed at the location in which Claimant and his gang were working. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for your failure to follow procedures established in the Track Maintenance Handbook effective March 1, 1986, for restoring track to service after changing switch ties located at M.P. 195.4 at Sibley, Iowa, which resulted in the derailment of train ATBPC at approximately 4:28 P.M., June 17, 1987.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

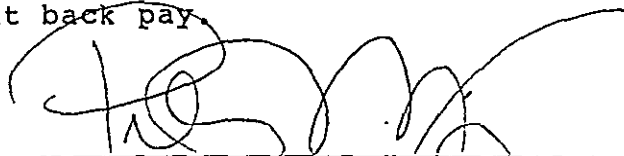
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant failed to follow established procedures

on June 17, 1987. Therefore, the Carrier was within its rights to impose discipline.

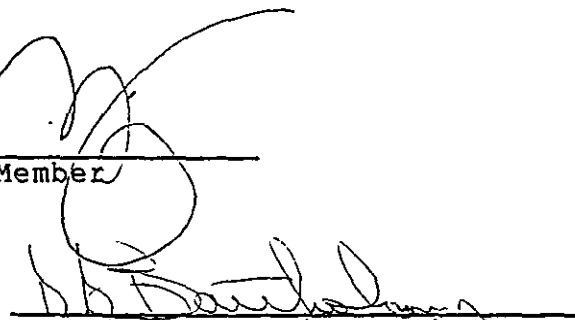
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to have been unreasonable, arbitrary, or capricious. In this case, the Claimant has been employed since 1974 and has never received any discipline before this. Given the nature of the offense, the discipline imposed by the Carrier for similar incidents in the past and the excellent, long-term record of the Claimant, this Board must find that the Carrier was unreasonable and arbitrary when it dismissed the Claimant. Therefore, we find that the Claimant shall be entitled to reinstatement with all of his benefits and seniority, but without back pay.

Award:

Claim sustained in part. The Claimant is to be reinstated to service, but without back pay.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date: September 28, 1988