

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 13  
Docket No. 13

PARTIES: Brotherhood of Maintenance of Way Employes  
TO :  
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The dismissal of Track Supervisor D. D. Bethards for his involvement in a hy-rail vehicle accident was without just and sufficient cause, arbitrary and excessive. (Organization File 2D-3710; Carrier File 81-83-113-D).
- (2) Track Supervisor D. D. Bethards shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

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

Prior to the date of the occurrence giving rise to the dispute herein, claimant was regularly assigned as Track Supervisor, Trenton Sub-Division. On April 7, 1983, he set his hy-rail truck, No. 21-3459, on the track at Mill Grove and started to patrol north.

The contention is made that while going around a curve, a box containing Company mail and other items, fell from the front seat of the hy-rail truck, and while claimant was picking up the material, his vehicle struck the hy-rail truck belonging to the Allerton, Iowa section crew that was performing work in the area. On April 7, 1983, claimant was notified to attend an investigation on April 15, 1983, on the charge:

"Your responsibility in connection with vehicle accident involving truck #21-2586 and truck #21-3459 on April 7, 1983 at approximately MP 5.2 on the Trenton Sub-Division."

The investigation was conducted as scheduled and on April 20, 1983, claimant was notified of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record.

Rule 1080 of Carrier's Rules of the Engineering Department, reads in pertinent part:

"1080. Hy-Rail vehicles must be operated at all times at a safe speed as the way is seen or known to be clear giving consideration to curvature, grade, visibility, condition of rail, loading and weather conditions. Unless otherwise authorized hy-rail vehicles must not exceed 35 MPH, except must not exceed....."

Also, in the investigation, reference was made to Rule 1062, which reads:

"1062. Employees in charge of hy-rail vehicles will be responsible for their safe operation."

Claimant being responsible for the safe operation of the hy-rail equipment, he would likewise be responsible for placing anything on the vehicle, such as the Company mail, that may in any way interfere with the safe operation.

On our review of the transcript of the investigation we find substantial evidence in support of the charge against claimant. Were it not for claimant's prior discipline record, we may agree that permanent dismissal was excessive. However, his prior discipline record was not good, and there is no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

Paul C. Carter  
Chairman, Neutral Member

H. H. Hangers  
Carrier Member

J. D. Crawford  
Labor Member

DATED: 2-16-94 .