

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

Case No. 147

Award 137

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and Northwestern Transportation Company

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

1. The disciplinary disqualification as common machine operator assessed E. C. Biller was capricious, improper, and unduly harsh (Employee File 4SW-1233D; Carrier File 81-88-24).
2. The Carrier violated the Agreement when the assistant vice president and division manager failed to respond in writing to the October 27, 1987, appeal letter within the time limits as prescribed in Rule 21.
3. That Claimant Biller's record and all seniority rights be restored unimpaired; that the discipline notice dated September 17, 1987, be stricken; and that Claimant Biller be compensated for all lost time as per Rule 19 of the current Agreement.

FINDINGS:

Claimant E. C. Biller was employed by the Carrier as a machine operator.

On September 8, 1987, the Carrier notified the Claimant to appear for a hearing in connection with the following charge:

Your failure to properly perform your duties on Friday, September 4, 1987, when Boom of Burro 40 System # 17-3010 came in contact with overhead power lines.

The Claimant was held out of service pending investigation, which took place on September 11, 1987. On September 17, 1987, the Carrier notified the Claimant that he had been found guilty of the charge and was assessed discipline of disqualification as common machine operator. The Organization thereafter filed a claim on Claimant's behalf, challenging his disqualification.

This Board has reviewed the procedural objections raised by the

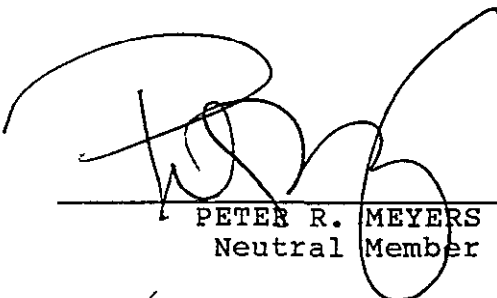
Organization, and we find them to be without merit.

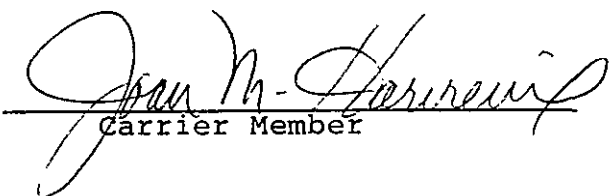
With respect to the substantive question, this Board has reviewed the record in this case and we find that the Claimant was aware of the safety rules and the overhead wires in the area that he was working, and he did not operate his Burro Crane safely. He was therefore negligent and deserving of discipline.

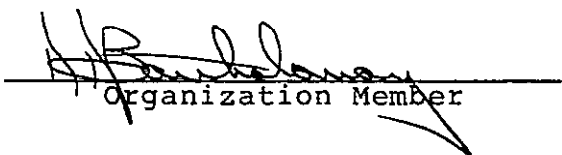
This Board has previously upheld the disqualification of an employee from a specific class of work when he has been found guilty of poor performance. (See Awards 92 and 134 of this Board.) This Board cannot find that the Carrier's action in this case violated any of the rights of the Claimant when he was disqualified from his position for his negligent actions. Therefore, the claim must be denied.

AWARD:

Claim denied


PETER R. MEYERS
Neutral Member


Joan M. Horowitz
Carrier Member


H. B. Schlam
Organization Member

Date: 12/17/90