

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

Case No. 170

Award 144

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 Claimant A. Perkins, section foreman, for allegedly failing to wear a hard hat and safety glasses in violation of the Carrier's safety rules and policies was capricious, unwarranted, and too severe.
2. Claimant Perkins shall be reinstated with all seniority rights unimpaired, compensated for all time lost, and made whole for all losses in accordance with Rule 19 (d).

FINDINGS:

Claimant A. Perkins was employed as a track foreman at Carrier's Irondale Yard.

On July 12, 1989, the Carrier notified the Claimant to appear for a hearing in connection with the following charge:

Your responsibility for not wearing your hard hat and safety glasses when you were observed working at Irondale Yard on Wednesday, July 5, 1989, at approximately 9:15 a.m.

The hearing took place on July 14, 1989; and on July 20, 1989, the Carrier notified the Claimant that he had been found guilty of the charge and was assessed discipline of dismissal. Thereafter, the Organization filed a claim on Claimant's behalf, challenging his dismissal.

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 was guilty of failing to wear his hard hat and safety glasses while working in the yard where they are required to be in use. The Claimant has admitted being without the safety equipment and has offered some excuses for his wrongdoing.

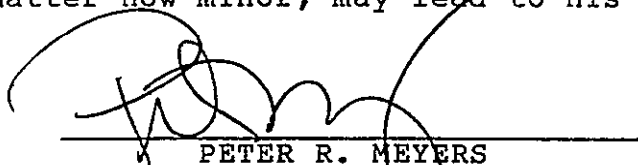
This Board rejects those excuses.

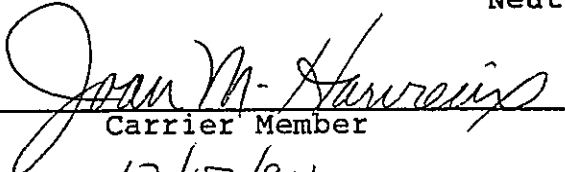
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

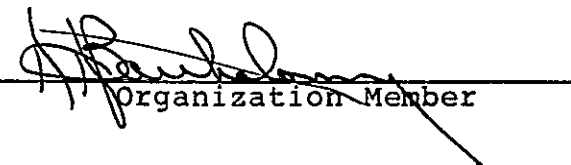
In the case at hand, the Carrier terminated the employment of the Claimant for his violation of the safety rule requiring the use of a hard hat and safety glasses. This Board recognizes that the Claimant has reached the last stage of the Carrier's disciplinary system. However, the Claimant has been employed since August 1980, and to have his employment end for this infraction would be unreasonable and capricious. Therefore, this Board hereby orders the reinstatement of the Claimant, but without back pay. It must be emphasized to the Claimant that this reinstatement is on a leniency and last-chance basis and any further infractions, even if minor, may lead to his dismissal.

AWARD:

Claim sustained in part. The termination of the Claimant is reduced to a lengthy suspension. The Claimant is to be apprised that this reinstatement is on a last-chance basis and any further infractions, no matter how minor, may lead to his dismissal.


PETER R. MEYERS
Neutral Member


Joan M. Hawkins
Carrier Member


Organization Member

Date: 12/17/90