

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 157

Award No. 153

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

1. The disqualification of Track Inspector Manuel Medina for allegedly not placing a speed restriction and failing to replace joint bars on August 29, 1988, and for failing to detect an irregular cross level in a curve on August 24, 1988, was without just and sufficient cause, unsupported and unproven (Organization File 9KB-4413D; Carrier File 81-89-16).
2. Manuel Medina shall have his seniority as a trackman restored, compensated for all wage loss suffered and have the discipline removed from his record in accordance with Rule 19(d).

FINDINGS:

Claimant Manuel Medina was employed by the Carrier as a track inspector at its New Line Subdivision.

On August 31, 1988, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Your responsibility for:

1. Not taking proper remedial action when you did not place a speed restriction or change the cracked bar that was pointed out to you by FRA inspector on August 29, 1988, on eastbound main at M.P. 16.1 on New Line Subdivision near Shermer, Illinois.
2. Not detecting irregular cross-level in a curve which did not meet proper FRA class of track which led to an eastbound SOO line freight train derailment of one car at M.P. 8.0 on August 24, 1988, on the New Line Subdivision near Elk Grove, Illinois.

After one postponement, the hearing took place on September 8, 1988. Following the hearing, the Claimant was disqualified as a track supervisor. The Organization thereafter filed a claim for reinstatement of the Claimant's track supervisor rights and pay for any losses caused by the disqualification. The Carrier denied the claim.

The parties being unable to resolve the issues, this matter came before this Board.

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 had not properly performed his inspection and he had not taken proper remedial action after he discovered some deficiencies in August of 1988. Claimant admitted that he did not put a slow order on the track as he was required to do simply because he did not believe there were going to be any trains going over the tracks before they could be repaired. That admission makes it clear that the Claimant did not use proper judgment and subjected himself to discipline.

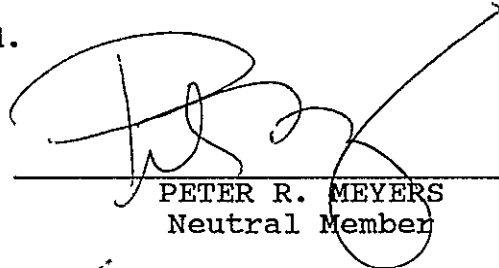
Once this Board had determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary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


In this case, the Claimant's previous record shows numerous incidents of poor job performance and undetected defects which

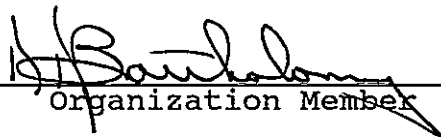
led to his receiving several previous suspensions and letters of reprimand. Despite the fact that the Claimant has been an employee for a number of years, this Board cannot find that the Carrier did not have just cause to disqualify the Claimant from his position as a track supervisor for his two incidents of wrongdoing in this case. Therefore, the Claim will be denied.

AWARD

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
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Joan M. Harwin  
Carrier Member  
Dated: April 24, 1992

  
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H. Baulderson  
Organization Member