

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

Case No. 172

Award No. 159

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

1. The dismissal of Trackman A. R. Guillen for reporting to work without proper footwear was without just and sufficient cause, capricious, unwarranted, and much too severe (Organization File 9KB-4500D; Carrier File 81-89-130).

2. Claimant A. R. Guillen shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

On July 17, 1989, the Claimant reported to work at 7:30 a.m. without the appropriate footwear. He was sent home and charged with failing to report to duty with the proper footwear. The Claimant testified that he had to go to court that day and had not planned on working, but there is no denial that he was not appropriately dressed for work.

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 was guilty of the charge of failing to report to work with the proper footwear.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next

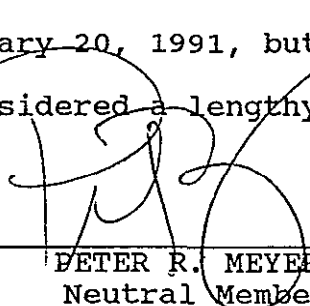
turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant was discharged for failing to show up for work with the proper footwear. The Carrier states that the reason for his discharge was that he had already previously received a five- and a ten-day suspension; and under the Carrier rules, the next rule violation leads to the termination of an employee.

This Board must find that the discipline assessed has served its purpose and, therefore, Claimant should be reinstated. This Board believes that he should receive a lengthy suspension for his time off, but that the Claimant should be returned to work without back pay on or before January 20, 1991. If Claimant does not return to work by that date, he shall receive back pay from that day forward.

AWARD:

Claim sustained in part. The Claimant is to be returned to work on or before January 20, 1991, but without back pay. The time off should be considered a lengthy suspension.



 PETER R. MEYERS
 Neutral Member



 Carrier Member



 Organization Member

Dated: 5/7/92