

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

Case No. 180

Award No. 162

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

1. The disqualification of Machine Operator F. A. Cruz for allegedly not making a proper inspection of his machine was without just and sufficient cause and excessive. (Organization File 9KB-4563D; Carrier File 81-90-54).
2. Machine Operator F. A. Cruz shall have his common machine operator's seniority restored, he shall be compensated for all wage loss suffered and have the discipline removed from his record.

FINDINGS:

On January 11, 1990, the Claimant, F. A. Cruz, was operating a Case W-36, Machine No. 17-3275. During this operation, the front wheel of the machine fell off resulting in damage to the machine. The claimant was summoned to appear at an investigation at which time he was charged with:

....not making proper inspection of the Case W-36 Machine No. 17-3275, before you operated same on January 11, 1990, which had a wheel fall off, causing damage in excess of \$3,000.

Contending that the Claimant testified that he did not check the lug nuts before he started operating the machine, the Carrier disqualified the Claimant as a common machine operator.

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 failing to make a proper inspection before he operated a piece of machinery. The Claimant admitted at the hearing that he did not check the lug nuts prior to operating the equipment. He stated that he did not have the tools and he did not ask anyone for the tools that would be required to tighten the lug nuts.

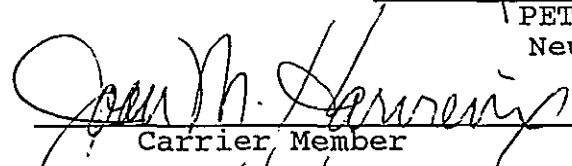
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

In the case at hand, the Claimant was disqualified from his position as common machine operator. Given the nature of the offense and the prior record of the Claimant, which includes four other instances of failing to properly maintain a machine, this Board cannot find that the Carrier acted unreasonably when it disqualified him from his position. Therefore, the claim will have to be denied.

AWARD:

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Dated: 5/10/97