

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

Case No. 181

Award No. 143

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

1. The discipline in the form of disqualification from foreman and assistant foreman ranks and the five (5) day suspension assessed Foreman D. G. Weik was without just and sufficient cause and on the basis of an unproven charge (Organization File 3KB-4575D; Carrier File 81-90-67).
2. Claimant D. G. Weik shall have his rights as a foreman and assistant foreman restored, compensated for all wage loss suffered and have the discipline removed from his record.

FINDINGS:

On March 12, 1990, the Claimant, Foreman D. G. Weik, was directing the operation of a Burro Crane on the St. Louis Subdivision in Virden, Illinois. While the crane was moving in a reverse direction, the boom came into contact with overhead wires.

The Claimant was summoned to appear at an investigation for the following charge:

Your responsibility in connection with electrical wires being struck by a crane that you were either operating or flagging for in the vicinity of M.P. 82.3 on the St. Louis Subdivision on March 12, 1990.

Contending that the Claimant testified at the hearing that he walked under the wires prior to the crane coming into contact with them, the Carrier assessed discipline of loss of his Foreman

and Assistant Foreman rights and a five-day suspension.

The Organization contends on the Claimant's behalf that prior to starting the job, the Claimant had checked the Carrier's list for overhead wires and found none listed for the area in which he and the crane operator were working.

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 that the Claimant was guilty of being one of the individuals responsible for electrical wires being struck by a crane which he was directing in his position of foreman on March 12, 1990. The Claimant admitted that he was flagging for the crane and was responsible to make sure that it did not come into contact with any overhead wires. It was the Claimant's responsibility to make sure that all obstructions were noted and that the operators were notified so that they could look out for them. Since the crane hit the overhead wires, the Claimant must be found to be one of the individuals responsible for that accident.


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.

The Claimant in the case at hand received a five-day actual suspension. Given the nature of the offense, and previous

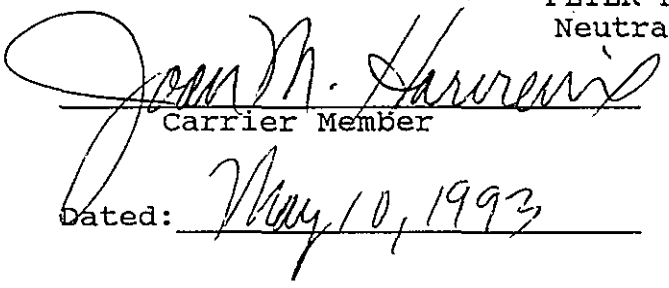
discipline that has been assessed to other employees for the same offense, this Board cannot find that the Carrier acted unreasonably when it issued the five-day suspension to the Claimant. Therefore, the claim will be denied.

AWARD:

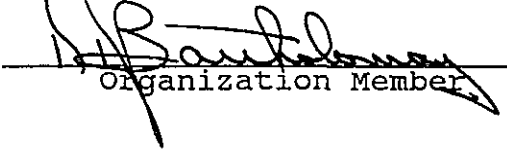
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: May 10, 1993

924-163

PETER R. MEYERS

ARBITRATOR / MEDIATOR

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May 26, 1993

Ms. J. M. Harvieux
Assistant Vice President
Chicago and North Western
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One North Western Center
Chicago, IL 60606

Mr. D. D. Bartholomay
Labor Member
Brotherhood of
Maintenance of
Way Employees
175 West Jackson Boulevard
Room 925
Chicago, IL 60604-2701

Re: Special Board of Adjustment 924: Brotherhood of
Maintenance of Way Employees and Chicago and North Western
Transportation Company; Case Nos. 181 and 184

Dear Ms. Harvieux and Mr. Bartholomay:

Please be advised that after hearing the arguments of the parties regarding an interpretation of the above two awards, I hereby state that I intended to find that the entire claims were denied, including denial of the claim for reinstatement of the one Claimant's machine operators' rights, and the other Claimant's assistant foremen's rights. I am sorry for any confusion that my award may have caused, but after a thorough review of my notes and records and after hearing the vigorous arguments of the Organization's representative, I stand with my original finding that the claims in both cases are denied in their entirety.

Very truly yours,


Peter R. Meyers

PRM:btj