

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

Case No. 182
Award No. 164

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

1. The five (5) day suspension assessed Common Machine Operator R. E. Sturkol was without just and sufficient cause and on the basis of an unproven charge (Organization File 8KB-4545D; Carrier File 81-90-41).
2. Claimant R. E. Sturkol shall be compensated for all lost time and have the discipline notation removed from his personal record.

FINDINGS:

On November 29, 1990, Claimant R. E. Sturkol was operating a bulldozer on the north side of the tracks at the Pine Street bridge where a project to shift tracks was underway. While dressing off an area where trees and brush were close to the siding so as to allow for safe train operations, Claimant dug four to four and a half feet and inadvertently cut a fiber optic cable buried there.

As a result, Claimant was notified to attend a hearing on the following charge:

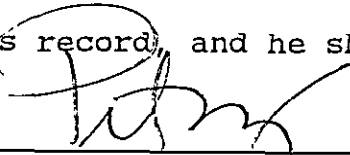
Your responsibility when you were working as a machine operator near Pine Street in Milwaukee, Wisconsin on November 29, 1989, when you did not determine if there were underground utilities in the area where digging took place and fiber optic cable was cut.

As a result of this hearing, the Carrier assessed the Claimant a five-day suspension contending that it was the

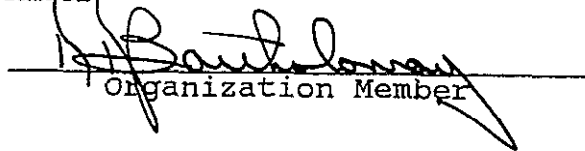
sufficient evidentiary basis that he was responsible for the accident. Therefore, the claim will be sustained.

AWARD:

Claim sustained. The five-day suspension shall be removed from the Claimant's record, and he shall be made whole.



PETER R. MEYERS
Neutral Member


Carrier Member
Organization Member

Dated: May 10, 1993

Claimant's responsibility to thoroughly and properly check for buried cable in the area that he was digging and that the Claimant was knowledgeable of such procedures as he had been doing similar work all year long.

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 the Carrier has not presented sufficient proof that the Claimant was responsible for the incident that led to the fiber optic cable being cut. Therefore, the claim will have to be sustained.

The record reveals that the cable that was severed was owned by a company known as Diginet and it was not listed on the Digger's List of cables that were buried in the area. Moreover, the record reveals that the Claimant was not in charge of the project, the project was already in progress and partially completed when the Claimant arrived to begin his assignment, and the Claimant was instructed by supervisors to perform the work in the area where the fiber optics cable was severed.

It is fundamental that in order to assess discipline, the Carrier must present sufficient evidence that the Claimant was responsible for the wrongdoing. In this case, there were a sufficient number of other people, plus a failure of the company itself to list the cable on the hotline, which contributed to the accident. This Board finds that it was unreasonable for the Carrier to issue a five-day suspension to the Claimant without a