

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

Case No. 184

Award No. 166

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

1. The disqualification and ten day (10) suspension assessed Common Machine Operator R. L. Kimbrel was without just and sufficient cause and on the basis of an unproven charge (Organization File 3KB-4576D; Carrier File 81-90-68).
2. Claimant R. L. Kimbrel shall have his common machine operator's rights restored, he shall be compensated for all wage loss suffered and his record cleared of the discipline.

FINDINGS:

On March 12, 1990, the Claimant, R. L. Kimbrel, was operating 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.

As a result of the hearing, the Carrier assessed discipline of loss of his machine operator's rights and a ten-day suspension.

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 being responsible in part for the crane that he was operating coming into contact with overhead wires. The Claimant admits that he did strike the overhead wires and that he was not in compliance with the applicable engineering rules.

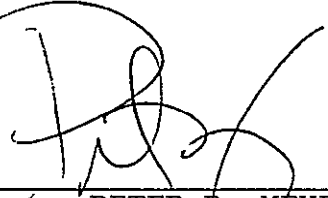
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

In the case at hand, the Claimant had already received a five-day suspension for a similar offense, striking overhead wires. Under the Carrier's discipline system, the next step is a ten-day suspension.

Given the nature of the offense that occurred here, as well as the previous disciplinary background of the Claimant, this Board cannot find that the Carrier acted unreasonably when it issued him the ten-day suspension. Therefore, the claim will be denied.

AWARD:

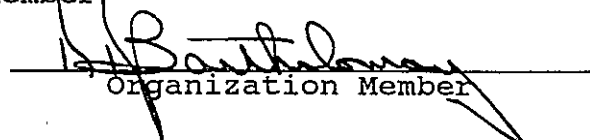
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: May 10, 1993

PETER R. MEYERS

ARBITRATOR / MEDIATOR

180 NORTH LASALLE STREET

SUITE 2630

CHICAGO, ILLINOIS 60601

TELEPHONE (312) 201-1515

FAX (312) 201-8085

May 26, 1993

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

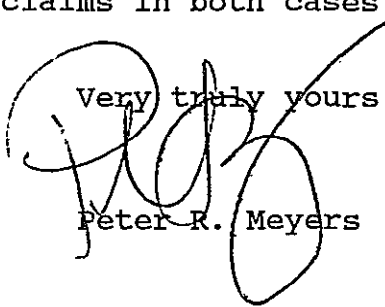
Mr. D. D. Bartholomay
Labor Member
Brotherhood of
Maintenance of
Way Employees
175 West Jackson Boulevard
Room 925
Chicago, IL 60604-2701

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