

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

Case No. 198

Award No. 171

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

1. The dismissal of Track Foreman F. J. Perkovich was without just and sufficient cause, excessive and capricious (Organization File 4PG-3404D; Carrier File 81-91-153).
2. Track Foreman F. J. Perkovich shall be allowed the remedy prescribed in Rule 19 of the June 1, 1985 Agreement.

FINDINGS:

On June 17, 1991, the Claimant, a track foreman employed at Carroll, Iowa, was operating a section vehicle eastbound and he stopped to repair crossties at Mile Post 248.15. Claimant had left the vehicle on the tracks while performing said repairs. Subsequently, the vehicle was struck and demolished by Train NPCSV. As a result, the Claimant was charged with allowing "....Section Vehicle System No. 21-5563 to remain on track and get hit by Train No. NPCSV at M. P. 248.15 at approximately 3:45 P.M. near Ralston, Iowa, on June 17, 1991 causing in excess of \$25,000.00 damage". After an investigation and based on his testimony, the Claimant was found guilty and dismissed from service.

The Organization filed a claim on behalf of the Claimant and the parties being unable to resolve the issue, 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 obtain permission to be on the track and failing to secure information to insure that no conflicting train movements were in the vicinity. The Claimant's actions were clear violations of Rules 1001, 1002, and 1005. Claimant admitted that he was familiar with the Rules and that he failed to clear the main track.

Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, 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.

Although the Claimant was clearly guilty of the Rule violations as set forth above, the record reveals that the Claimant had nearly 13 years of service and a relatively good record with the Carrier. Therefore, this Board finds that it was unreasonable for the Carrier to dismiss the Claimant from service. Consequently, this Board orders that Claimant shall be reinstated with trackman rights only. Claimant will continue to be disqualified from both machine operator jobs and the section foreman position.

AWARD

Claim sustained in part. Claimant is to be reinstated but without backpay. The Claimant's reinstatement will include

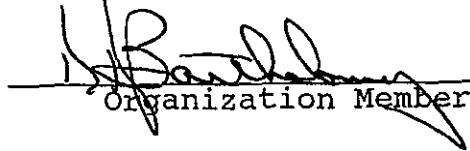
trackman's rights only and he will be disqualified from machine operator jobs and section foreman positions.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: June 23, 1993