

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

Case No. 190

Award No. 175

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

1. The five (5) day suspension assessed Foreman H. D. Harris for his alleged responsibility for not following proper track maintenance procedures was without just and sufficient cause and capricious (Organization File 2PG-3349D; Carrier File 81-90-103).
2. Claimant H. D. Harris shall now be allowed the remedy provided in Rule 19 of the Agreement.

FINDINGS:

On June 27, 1990, the Claimant and his crew replaced eight crossties in a "16 1/2 foot section of continuous welded rail" in approximately 85 degree weather. After an inspection of the rail by the superintendent, the Claimant was instructed to adjust the rail in accordance with Carrier Rule 322 which states in part:

Do not disturb CWR (continuous welded rail) when rail temperature is higher than its adjusted installation temperature unless a method of adjustment approved by the Assistant Chief Engineer-Maintenance is used.

Subsequently, the Claimant was charged with failing to properly follow the Carrier's track maintenance procedure and, after an investigation, was found guilty and assessed a five-day suspension.

The instant claim was filed 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 violating the Carrier Rules relating to installation of welded rail and the laying of ties set forth in Rule 322 and Rule 1005.

At the hearing, Claimant admitted that he installed more than six ties in a 39-foot section of track and that he did not adjust the rail prior to installing the ties. Claimant also admitted that when they finished the work that day, the temperature was 90 degrees.

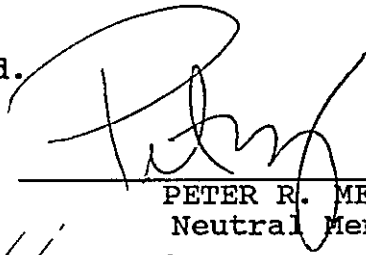
Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

The Claimant's service record in this case indicates that he had previously received two letters relating to safe working conditions and failing to make a quality check. Given that background and the facts of this case, this Board cannot find that the Carrier's action in issuing a five-day suspension to this Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

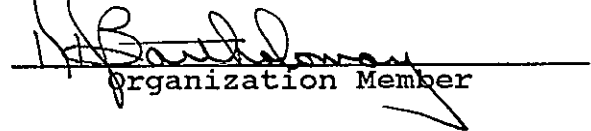
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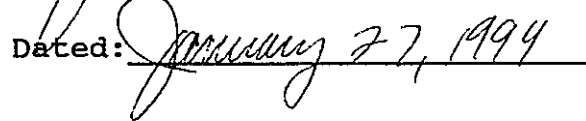
AWARD:

Claim denied.

  
PETER R. MEYERS  
Neutral Member

  
Carrier Member

  
Organization Member

Dated:  January 27, 1994