

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

Case No. 192

Award No. 176

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

1. The disqualification of Assistant Foreman O. J. Edwards and the five (5) day suspension assessed him for his alleged responsibility for the injury he sustained was without just and sufficient cause and totally unfair (Organization File 8KB-4616D; Carrier File 81-90-110).
2. Claimant O. J. Edwards shall now have his assistant foreman's seniority restored and be compensated for all wage loss suffered as a result of the disqualification and five (5) day suspension.

FINDINGS:

On June 14, 1990, the Claimant sustained an injury to his left leg when he was struck by a spike driver while straightening tie plates near Kay, Wisconsin.

Subsequent to a formal investigation, the Claimant was assessed a five-day suspension and disqualified as an assistant foreman because it was determined that it was the Claimant's "responsibility to exercise care in preventing injury to himself", and he did not do it.

The instant claim was filed on behalf of the Claimant and the parties being unable to resolve this 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 Carrier safety policies and rules when he failed to insure that there was an adequate clearance between him and the spiker. The record is clear that the Claimant contributed to his own injury by his failure to exercise due care.

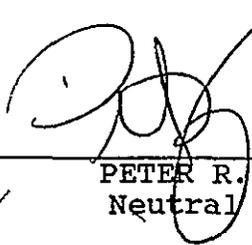
Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

In this case, the Claimant was issued a five-day suspension and he was disqualified from his assistant foreman rights. Given the nature of the Claimant's wrongdoing in this case, and the fact that he has a relatively good disciplinary record, this Board must find that the Carrier's imposition of a permanent disqualification of foreman's rights was excessive and an unreasonable penalty under the circumstances. There is no question that the Carrier had an absolute right to issue the Claimant a five-day suspension since he had previously received a written warning. It may have also been appropriate to temporarily suspend his assistant foreman rights and send him to retraining. However, to have his assistant foreman seniority rights terminated permanently is simply too severe a penalty for Claimant's failure to exercise care to prevent an injury to himself. Consequently, this Board finds that the five-day suspension shall stand and the Claimant's disqualification from

the date of the imposition of the penalty until the receipt of this Award shall stand. However, Carrier shall return the Claimant's assistant foreman rights to him as soon as possible, and provide for him whatever retraining and other requirements are necessary for him to resume his position as an assistant foreman.

AWARD:

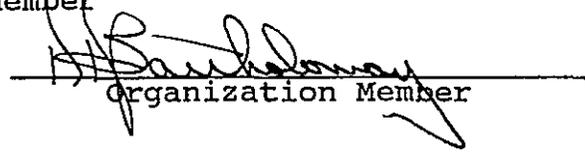
Claim sustained in part. The five-day suspension of the Claimant and the temporary disqualification of his assistant foreman rights will be sustained; however, upon recertification, the Claimant shall be allowed to return to his assistant foreman position.



PETER R. MEYERS
Neutral Member



Joan M. Lawrence
Carrier Member



H. S. ...
Organization Member

Dated: January 27, 1994