

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

Case No. 204

Award No. 178

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

1. The dismissal of Common Machine Operator M. L. Frauen for his alleged violation of safety rules, when the crane he was operating came in contact with overhead power lines, was without just and sufficient cause, capricious and excessive punishment (Organization File 4PG-3422D; Carrier File 81-92-29).
2. Common Machine Operator M. L. Frauen shall now be allowed the remedy provided in Rule 19(d).

FINDINGS:

On August 12, 1991, the Claimant had been operating a Little Giant crane in Sergeant Bluff, Iowa when the boom of his crane struck the overhead power lines. Subsequently, the Claimant was required to appear at a formal hearing to determine his responsibility for his actions which were allegedly not in compliance with the Carrier's safety Rules. The Claimant was found guilty of all charges and was dismissed from service.

The instant claim was filed by the Organization on behalf of the Claimant and the parties being unable to resolve the issue, this matter comes 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

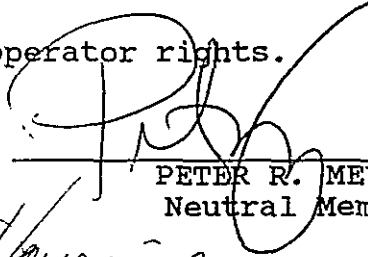
Safety Rules 1070 and 1072 when the crane he was operating came into contact with the overhead power lines.


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 the case at hand, the record reveals that the Claimant has been employed by the Carrier since September of 1975. Given that lengthy record which includes some discipline but is not a bad record, this Board finds that the Carrier acted unreasonably when it terminated the Claimant. This Board orders that the Carrier reinstate the Claimant as a trackman with no machine operator rights. Claimant shall be reinstated without backpay. The time that the Claimant was off from work will be considered a lengthy suspension.

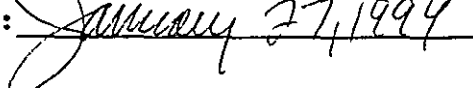
AWARD:

Claim sustained in part. Claimant is to be reinstated without backpay. The time that he was off shall be considered a lengthy suspension. Claimant will be reinstated as a trackman with no machine operator rights.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Dated:  January 27, 1994