

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

Case No. 205

Award No. 179

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

1. The Carrier violated the Agreement when it disqualified Mr. M. S. Grommet as a speed swing operator (Organization File 4LF-2455T; Carrier File 81-90-203).
2. Common Class Machine Operator M. S. Grommet shall have his speed swing operator's seniority restored and he shall be made whole for all time lost as a result of this disqualification.

FINDINGS:

On May 30, 1991, the Claimant was operating a speed swing and had been operating a speed swing for a period less than 60 days. On the date in question, he was instructed to unload material from a semi-trailer located north of the roadhouse. While Claimant was driving the speed swing over to the semi-trailer, the speed swing rolled over and damaged four hopper cover doors. Subsequently, after a hearing, the Claimant was disqualified as a speed swing operator.

The Organization filed a claim on behalf of the Claimant in accordance with Rule 20 of the Agreement challenging the disqualification of the Claimant.

The Carrier denied the claim contending that since the Claimant was operating the speed swing less than 60 days from the time of the incident and Rule 4(c) of the Agreement "provides for

a 60-day period in which to qualify", the Claimant's action disqualified him as a speed swing operator. Furthermore, the Carrier's witnesses testified that there were two other routes which the Claimant could have used to avoid any collision with objects in his path.

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 responsible for operating the speed swing in a negligent manner causing damage to the hopper doors. The record is clear that the Claimant ran over and crushed the four hopper doors, and it is also evident that he did not choose the most prudent method to go around the materials in his path rather than to try to go through a narrow area that contained objects.

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.

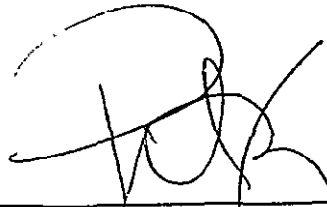
In the case at hand, the Claimant was disqualified from his position as a speed swing operator. Given the fact that he was still in his probationary period, and the fact that he had been disqualified as a boom truck operator nine months prior to this incident, this Board cannot find that the Carrier acted

unreasonably when it disqualified him from this position.

Therefore, the claim will be denied.

AWARD:

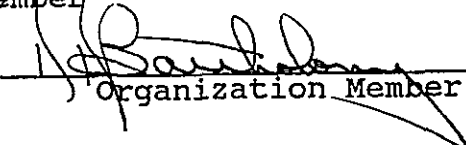
Claim denied.



PETER R. MEYERS  
Neutral Member



Carrier Member



Organization Member

Dated: January 27, 1994