

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

Case No. 208

Award No. 180

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

1. The five (5) day suspension and the disqualification as a machine operator in the common, Class A, Class B, Class C and system machine operator's classes assessed Machine Operator M. S. Grommet was without just and sufficient cause, capricious and excessive (Organization File 4PG-3418D; Carrier File 81-92-22).
2. Machine Operator M. S. Grommet shall now be allowed the remedy provided in Rule 19(d).

FINDINGS:

On July 25, 1991, the Claimant was operating a dump truck in the area of Blair, Nebraska. After another Carrier employee who was operating a dozer cleared an area for the Claimant to dump his load, the Claimant backed in and proceeded to raise the bed of the truck. In the meantime, the rear tires began to sink into the loose soil and the truck rolled onto its side. The truck was then lifted back into position by the dozer. As a result of this incident, the rear wheel and rim were damaged.

The Claimant was notified to appear for a formal hearing to determine his responsibility in the aforementioned incident. After the hearing, the Claimant was found guilty and assessed a five day suspension in addition to being disqualified as a machine operator.

The Organization filed a claim on behalf of the Claimant taking exception to the discipline assessed the Claimant contending that it was excessive.

The Carrier denied the claim contending that the discipline was properly based upon the Claimant's personnel record and the testimony of witnesses who were on site at the time of the incident in question.

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 failing to operate his dump truck properly leading to an accident that caused damage to Carrier property. The record is clear that it was the Claimant who was responsible to operate the truck properly and it was his fault that the truck rolled on its left side and incurred damage.

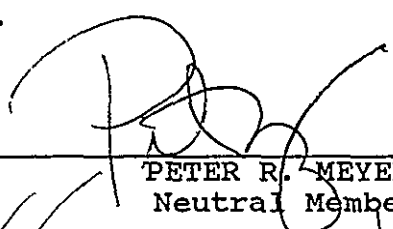
Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

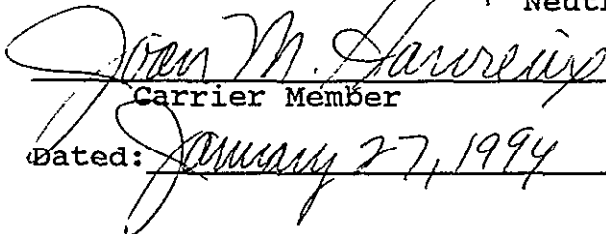
The Claimant in this case had twice previously been found guilty of improper operation of a piece of machinery. His personnel record reflects that he was disqualified in 1990 from operating a boom truck and he was disqualified in 1991 from

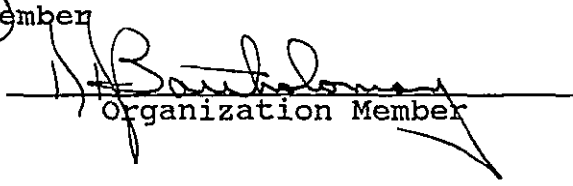
operating a speed swing. Given that previous discipline, this Board cannot find that the Carrier's action in issuing a five-day suspension and disqualifying the Claimant from operating all machines was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
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Joan M. Lawrence  
Carrier Member  
Dated: January 27, 1994

  
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H. B. Bartholomew  
Organization Member