

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 194

AWARD 187

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Carrier's decision to disqualify Mr. L. L. Soren as a track supervisor, foreman and assistant foreman for alleged failure to detect and take corrective action for a wide gauge condition on June 27, 1990 was without just and sufficient cause and capricious (Organization File 2PG-3350D; Carrier File 81-90-112).
2. Claimant L. L. Soren shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

At the time of this incident, Claimant L. L. Soren was employed by the Carrier as a track supervisor located at the Jewell Subdivision.

On June 27, 1990, the Claimant's crew installed eight crossties at Mile Post 53.7 before noon. In the afternoon, two Carrier supervisors inspected the area where the crossties were installed and determined that the installation was not done according to Rule 1005 which explains the proper procedure to be taken when installing crossties in hot weather.

Subsequently, the Claimant was charged for failing to "detect and take corrective action for a wide gauge condition at Webster City on the Jewell Subdivision..." He was

found guilty as charged and disqualified as a track supervisor, foreman and assistant foreman. The Organization filed a claim on behalf of the Claimant but it was denied.

The parties not being able to resolve the issues, 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 failing to detect and take corrective action for the wide gauge condition on the date in question. In the transcript it is clear that the Claimant was asked if he was responsible to detect and arrange for the immediate correction of defects. He testified that he was and he did not do that at that time. He stated, "We fixed it the next morning". There is no question that the Claimant was guilty of the wrongdoing with which he was charged.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next must 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.

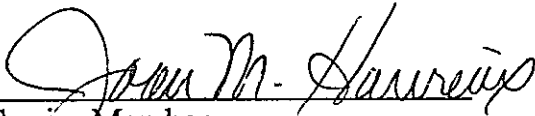
The Claimant's personnel record reveals that he has previously been placed on the Carrier's discipline system and had actually been disqualified as a track foreman less than one year before this incident. Since the Carrier has proven that the Claimant was not properly performing his duty nor living up to his supervisory responsibilities, this Board cannot find that the Carrier's action in disqualifying him from his supervisory position was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.

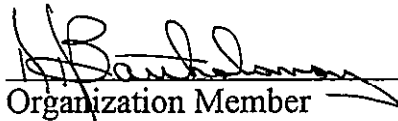


PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 6/3/94



Organization Member

DATED: June 3, 1994