

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 216

*Award 194*

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The disqualification of Foreman A. G. Gaines as a foreman and assistant foreman for improperly dismounting a ballast regulator was without just and sufficient cause, unsupported and capricious (Organization File 9KB-4851D; Carrier File 81-92-36).
2. Claimant A. G. Gaines shall now have his seniority restored as a foreman and assistant foreman, compensated for all wage loss suffered and have the discipline removed from his record.

FINDINGS:

Claimant Gaines, a surfacing gang foreman, was observed by Roadmaster Ray on October 5, 1991, allegedly dismounting incorrectly from a ballast regulator. Consequently, the Claimant was notified to attend a hearing on the charge of not dismounting a ballast regulator properly.

At the hearing, the roadmaster testified that the Claimant had "jumped off the regulator....facing with his back to the machine and jumped off the wing....to the ballast section". Based on Roadmaster Ray's testimony of his observations, the Carrier determined that this action by the Claimant was a violation of its Safety Rule 1000(B)

which states:

When getting on or off engines, cars or equipment, face ladders, maintain secure handhold and keep hands free of tools, radios, grips or other material.

Therefore, the Carrier found the Claimant responsible for his actions and disqualified him as a foreman and assistant foreman. The Organization took exception to the discipline imposed and filed the instant claim on behalf of the Claimant.

The parties being unable to resolve the issue, this matter now 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 failed to follow the required procedures when he dismounted the ballast regulator on October 5, 1991. Claimant admitted at the hearing that he "dismounted it with my back to the machine".

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.

There is no question that a foreman must set an example for the other employees working under him and that the Carrier had a right to disqualify the Claimant from his position as foreman. However, this Claimant has worked for the Carrier for 12 years, and this Board finds that the Carrier went too far in also permanently terminating the

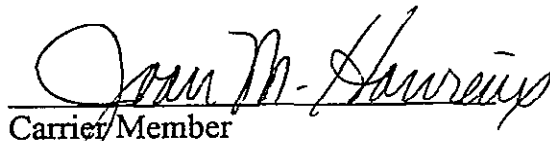
Claimant's assistant foreman rights. Hopefully, as an assistant foreman, Claimant will learn the procedures and responsibilities that go along with his job and eventually work himself into a more responsible position.

### AWARD

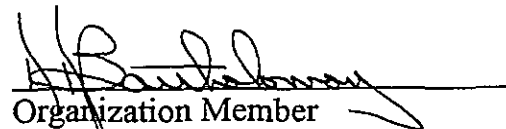
Claim sustained in part. The Carrier had just cause to terminate the Claimant's foreman rights, but did not have just cause to permanently terminate the Claimant's assistant foreman rights. Effective immediately, Claimant's assistant foreman rights shall be reinstated.



PETER R. MEYERS  
Neutral Member

  
Carrier Member

DATED: June 3, 1994

  
Organization Member

DATED: June 3, 1994