

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

AWARD No. 196

Case No. 200

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The five (5) day suspension assessed Surfacing Gang Foreman P. A. Welding for allegedly not wearing a seat belt when operating a Carrier owned vehicle on September 4, 1990 was without just and sufficient cause, capricious and based on unproven charges (Organization File 4LF-2381D; Carrier File 81-91-15).
2. Surfacing Gang Foreman P. A. Welding shall now have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On September 4, 1990, Claimant P. A. Welding, a foreman on a surfacing gang, was observed by two Carrier officers operating a Carrier vehicle and not wearing his seat belt. Subsequently, the Claimant was notified to attend a formal investigation on the charge of "not wearing a seat belt when...operating a company vehicle".

At the hearing, Roadmaster Luksan, one of the observing officers, testified that he had seen the Claimant operating the Carrier vehicle without wearing his shoulder strap. He further testified that when he approached the vehicle and looked inside, the Claimant was not wearing the lap belt either. The Claimant testified that he did have the lap belt fastened but that the reason he did not have the shoulder belt on was because it was

broken.

The Claimant was found guilty and assessed a five-day suspension.

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 was guilty of violating the rule requiring the wearing of seatbelts when operating Carrier-owned vehicles. Although the Claimant stated at the hearing that the belt was broken and that is why he was not wearing it, he did not make any similar statement at the time of the incident. Consequently, the credibility of that testimony is somewhat in question. Moreover, the record contains evidence that he admitted to the roadmaster shortly after the incident that he had taken the belt off earlier.

Since Rule 1104 requires the use of seatbelts and shoulder harnesses, the record is clear that the Claimant was in violation of that rule.


Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, 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 actions to have been unreasonable, arbitrary, or capricious.

Given the nature of the wrongdoing in this case, and the fact that the Claimant's personal record indicates that he received a letter of warning placing him on the discipline system in August of 1990, a five-day suspension was appropriate discipline for this safety

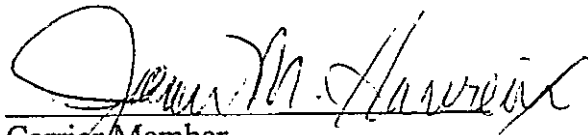
violation. Therefore, the claim will be denied.

AWARD

Claim denied.




PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 8/3/94



Organization Member

DATED: 8-3-94