

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

AWARD No. 198

Case No. 220

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The disqualification of R. T. Husby as a track supervisor, foreman and assistant foreman was without just and sufficient cause and excessive (Organization File 7RP-5085D; Carrier File 81-91-190).
2. The Carrier violated the Agreement when it did not timely notify the General Chairman of the discipline and provide a copy of the investigation transcript as required by Rule 19(b).
3. As a result of Parts (1) and/or (2) above, R. T. Husby shall now have his seniority rights as a track supervisor, foreman and assistant foreman restored and he must be compensated for all wage loss suffered.

FINDINGS:

Claimant R. T. Husby, a foreman, was working on the Eau Claire Subdivision on July 10, 1991. The area where the Claimant and his surfacing gang were working was protected and, therefore, it was the Claimant's responsibility to place red flags or boards at the appropriate mile posts warning approaching trains.

At approximately 11:35 a. m. on the date in question, Train EMPRA, while approaching the Eau Claire Subdivision, was put into emergency by its engineer allegedly because a red board was placed at Mile Post 84.2 instead of 84.7. Subsequently, the Claimant was notified to attend an investigation to determine his responsibility in

allegedly misplacing the red boards while working on the Eau Claire Subdivision.

At the hearing, it was determined that the red board should have been placed at MP 84.7 instead of at MP 84.2. Hence, it was placed one-half mile short of where it was supposed to have been placed. As a result of the evidence presented at the hearing, the Claimant was found guilty as charged and disqualified as track supervisor, foreman, and assistant foreman.

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 placing the red board at the wrong location. Claimant admitted that he put the red board at the Mile Post 84.2 and he is now aware of the consequences of his wrongful action. As a result of the Claimant's action, the train had to go into an emergency, and as a result, a knuckle was broken on one car and the train was delayed.


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.

In the case at hand, the Claimant had previously been disqualified as track foreman and track supervisor. The Claimant's record also reveals three letters of reprimand and 5-day and 30-day suspensions. Given the nature of the wrongdoing in this case, and the

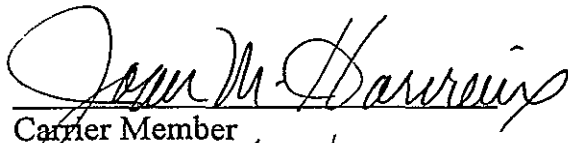
previous disciplinary record of the Claimant, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 8/4/94



Organization Member

DATED: 8-3-94