

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

AWARD No. 203

Case No. 228

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Machine Operator R. C. Ryan for his alleged responsibility in the tamper and hi-rail truck accident was without just and sufficient cause, unreasonable, inappropriate, excessive and capricious (Organization File 6LF-2519D; Carrier File 81-93-52).
2. Claimant R. C. Ryan shall now be allowed the remedy prescribed in Rule 19(d) of the Agreement.

FINDINGS:

On September 17, 1992, the Claimant, R. C. Ryan, was operating a slave tamper at Mile Post 162.5 near Belle Fourche when his machine collided with a hy-rail pick-up truck. *The collision resulted in injuries to one trackman and the death of another.* Subsequently, the Claimant was charged with being responsible for the collision and a hearing was held into the matter.

During the hearing, the Claimant testified that he was "out there going through [his] normal procedures at work", that he was "looking down to see where the marks on the ties were to start [his] work.....and as [he] looked up, the pickup was right there". He further added, "that was my first reaction...to brake, there wasn't time to brake and stop."

Following the hearing, the Claimant was found guilty of the charges and dismissed from service. The Organization filed a claim on the Claimant's behalf seeking his reinstatement and compensation for all lost time but the claim was denied.

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 responsibility for the accident which led to the fatality. The record reveals that the Claimant was working with the surfacing gang and as the machine operator of the slave tamper, it was his responsibility to make sure that the equipment did not come into contact with another object or person. The Claimant admitted that he never looked up or looked ahead in a sufficient amount of time to avoid an accident or any obstruction ahead of him. The record reveals that the Claimant acted in a negligent fashion on the date in question resulting in the death of one person and injuries to another.

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.

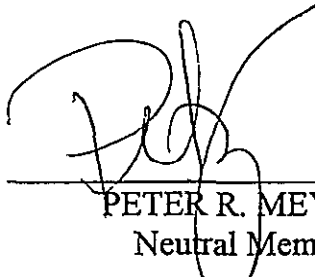
Although this Claimant has compiled over 18 years of seniority, the record reveals that he has been previously involved in a collision and has received several previous disqualifications from various positions. Moreover, his record further reveals a ten-day

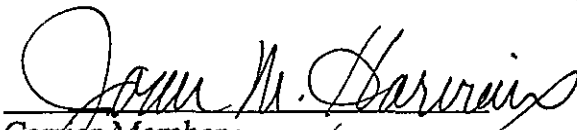
deferred suspension for that previous collision, two five-day deferred suspensions, and a ten-day actual suspension.

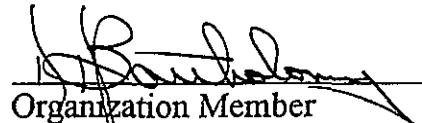
Given the serious wrongdoing of the Claimant in this case and his previous disciplinary background, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Carrier Member  
DATED: 8/4/94

  
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Organization Member  
DATED: 8-3-94