

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 218

Award No. 204

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The ten (10) day suspension assessed Machine Operator D. E. Jones was without just and sufficient cause and in violation of the Agreement (System File 2PG-3450D; Carrier's File 81-92-69).
2. Machine Operator D. E. Jones shall now have Discipline Notice No. 127 removed from his record and he must be made whole for all lost time as provided in Rule 19 of the Agreement.

FINDINGS:

On November 21, 1991, while assisting a crossing gang move cars, the Claimant was operating a car mover on the Main Track in the centralized traffic control territory allegedly without the proper permit. As a result, the Claimant was charged with "occupying the Main Line track in a car mover without CTC track permit".

At the investigation, the Claimant stated that he thought he was working under the permit issued to the crossing gang foreman who he was assisting and, therefore, he did not apply for a permit for himself. The foreman, however, did not cover the Claimant under his permit because the Claimant was operating the car mover in another part of the area where the crossing gang was working. The Claimant was found guilty as charged

and assessed a ten-day suspension.

The parties being unable to resolve the issue, this matter now comes before this Board.

This Board has reviewed the procedural claim raised by the Organization and we find it to be without merit.

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 occupying the Main Line in the CTC territory without securing a permit. Claimant admitted that he did not secure a permit; although, he believed he was working under another permit that had been issued to crossing gang Foreman McBride. The record reveals that the Claimant had been specifically told to get his own permit since he would be working south of the area where McBride was working. It is clear that the other crew having obtained a permit to work five or six miles away was not sufficient to relieve the Claimant of his responsibility to protect his own work area.

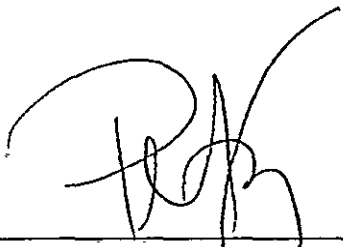
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

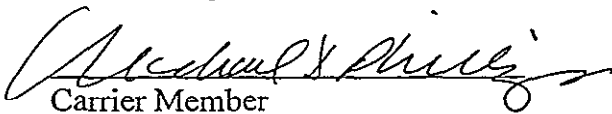
In this case, the Claimant had previously been cited for 15 separate instances of rule violations over 15 years of service with the Carrier. He had received several letters

of reprimand, a 15-day deferred suspension, and a five-day actual suspension five months before this incident. Given the previous service record of the Claimant and the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably when it issued a ten-day suspension to the Claimant. Therefore, the claim must be denied.


AWARD

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
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Carrier Member

DATED: 12-1-94

  
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Organization Member

DATED: 12-1-94