

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 231

Award No. 208

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Common Class Machine Operator T. A. Weilgus for his alleged responsibility in a gondola car striking the truck he was operating on December 10, 1992 was without just and sufficient cause, based on an unproven charge and capricious (System File 9KB-4989D; Carrier's File 81-93-49).
2. Common Machine Operator T. A. Weilgus shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

On December 10, 1992, the Claimant was assigned to operate a salt/snow plow to clear and salt the yard. At approximately 1:05 p. m. the Claimant was driving his plow across a set of tracks in an active hump yard when the plow "stalled on the crossing and was struck by a gondola car". Consequently, the Claimant was required to attend a hearing to determine his responsibility for his actions when he was operating a "10 Yard Truck equipped with a snow blade and salt spreader" and was "hit by Gondola on the Fire Road at the hump in Proviso Yard".

At the hearing, the Claimant testified that he saw the gondola car when he was

approaching the track but that he thought that he had enough time to clear the tracks. His truck, however, stalled on the third track and he could not get it started. The Manager of Maintenance Operations testified that the truck the Claimant was operating was a 1992 GMC with approximately 800 to 850 miles. He further testified that there had been no prior problems reported with the truck and it was checked out by two garages after the accident and was found to be in "proper running condition". The damage sustained to the truck was approximately \$40,000.00.

Based on the testimony at the hearing, the Claimant was found guilty and dismissed from service.

On March 15, 1993, the discipline was reduced to a suspension and a disqualification of the Claimant's machine operator rights and he was reinstated back into service as a trackman.

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 being responsible for an accident which led to a great deal of property damage on December 10, 1992. The Claimant admits that he was operating the vehicle across the tracks when the vehicle stalled and would not restart. The Claimant's own testimony at the hearing makes it evident that he did not exercise the proper amount of safety that was

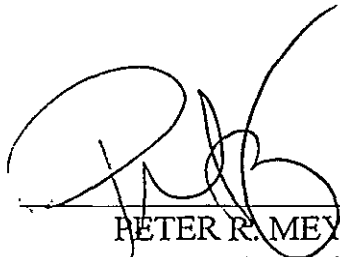
necessary for the situation. Therefore, he was in violation of Rules 1102, 1110, and 1114.

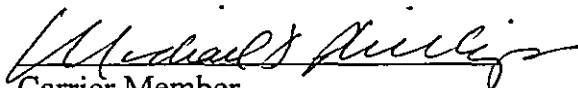
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

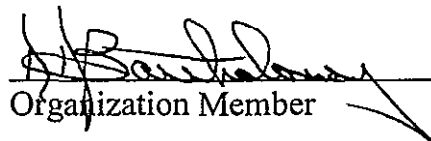
The Claimant's record reveals that he had previously been cited for several accidents resulting from his negligence. Given the fact that the Carrier has already reinstated him and reduced his discipline to a suspension and disqualification, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when imposing the discipline in this case. Therefore, the claim will be denied.

AWARD

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

DATED: 1-5-95

DATED: 1-5-95