

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 26
Docket No. 30

PARTIES: Brotherhood of Maintenance of Way Employes

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day deferred suspension assessed Foreman S. M. Remer for allegedly operating a Tamper in an unsafe manner was without just and sufficient cause and on the basis of an un-proven charge. (Organization File 3D-3745; Carrier File 81-83-158-D).
- (2) Foreman S. M. Remer shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employes and the Carrier involved, are respectively employes and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

Claimant was regularly assigned as a section crew foreman at Carrier's Illinois Division Madison Yard, hours 7:30 A.M. to 4:00 P.M., Monday through Friday. On April 25, 1983, claimant was moving a production tamper through Edwardsville, Illinois, at what a Roadmaster considered an unsafe speed while approaching a public road crossing in the center of town. On April 27, 1983, claimant was instructed to attend formal hearing scheduled for 9:00 AM, May 3, 1983, in the office of Roadmaster at Benld, Illinois, on the charge:

"To determine your responsibility in connection with your failure to operate tamper in a safe manner when crossing Schwarz Street in Edwardville, Ill., M.P. 134.2, on April 25, 1983 while employed as a track foreman on the Illinois Division."

By agreement, the hearing was rescheduled for 11:00 AM the same date in the office of Roadmaster at South Pekin. A copy of the transcript of the hearing has been made a part of the record. We find that the hearing was conducted in a fair and impartial manner. Following the hearing, claimant was assessed discipline of thirty days deferred suspension.

Carrier's Rules 1043 and 1044 of Rules of the Engineering Department, were read into the hearing, and provide:

"1043: Work equipment must give right-of-way to all highway traffic. When approaching a highway where view is obstructed, the work equipment must be stopped and the operator must have absolute knowledge that crossing is clear before proceeding. When necessary, a member of the crew must flag the crossing."

"1044: Work equipment must be operated at all times at a safe speed as the way is seen or known to be clear giving consideration to curvature, grade, visibility, condition of rail, loading and weather conditions. Unless otherwise authorized, work equipment must not exceed 30 MPH, except must not exceed:

- 20 MPH when coupled with other work equipment or hy-rail vehicles.
- 10 MPH when passing stations, through yards, over switches, frogs, railroad, highway or farm crossings and through interlockings.
- 10 MPH in back-up movement. Track cars must not be operated in reverse beyond first point where they can be turned."

In the investigation, or hearing, the Roadmaster testified that he observed the tamper being operated by claimant approach the crossing involved at about 20 miles per hour, and that the tamper did not slow down for the crossing. Claimant estimated his speed over the crossing at 10 miles per hour, and when questioned as to whether he reduced his speed when he reached the crossing, his answers were somewhat evasive.

There is considerable difference between a speed of 10 miles per hour and 20 miles per hour for a tamper in a situation of the kind here involved. Rule 1044 does not establish 10 miles per hour as the safest speed in all cases. There was considerable conflict between the testimony of the Roadmaster and that of the claimant. We adhere to the principle that a Board of this nature does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Carrier. The Board may not properly reverse the Carrier's decision simply because of conflicts in testimony. Further, in a case of this kind the Carrier has a right to rely upon the testimony of its supervisor.

A W A R D

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

Dated: Sept. 17, 1984