

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 40

Docket No. 41

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

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

- (1) The fifteen (15) day suspension assessed Machine Operator L. L. Boller for his alleged responsibility in connection with an accident involving Tamper 17-2267 was without just and sufficient cause. (Organization File 2D-4181; Carrier File 81-84-41-D).
- (2) Machine Operator L. L. Boller 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 employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Prior to the occurrence giving rise to the dispute herein, claimant was employed as a production gang tamper operator on the Carrier's Central Division. On October 18, 1983, claimant was traveling his machine on the Fort Dodge Sub-Division and was involved in an accident with a moving vehicle on a public road crossing near Eagle Grove, Iowa. On October 18, 1983, claimant was notified to attend a formal investigation, scheduled for October 25, 1983, on the charge:

"Your responsibility in connection with accident involving Tamper, #17-2267, at crossing, M. P. 354-5, on Ft. Dodge Sub, Eagle Grove, Ia. on October 18, 1983."

The investigation was conducted as scheduled. A copy of the transcript has been made a part of the record. Following the investigation, claimant was assessed discipline of fifteen days suspension, which activated a thirty-day deferred suspension.

Rule 1043 of Carrier's Rules of the Engineering Department provides:

"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 the crossing is clear before proceeding. When necessary, a member of the crew must flag the crossing."

Rule 1044 of the Engineering Department Rules reads:

"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."

There was substantial evidence adduced at the investigation that claimant did not operate the tamper in accordance with the above quoted rules. Claimant indicated in the investigation that the weather was clear and the visibility was good. The discipline imposed was not arbitrary, capricious or in bad faith, especially when considered along with claimant's prior record.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. G. Hopper
Labor Member

Dated: May 29, 1935.