

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 48
Docket No. 42

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 thirty (30) day actual suspension and disqualification as a track foreman assessed Foreman J. C. Meeker for failure to have in his possession a current train location line-up while operating a vehicle on a main line track was without just and sufficient cause, unsupported and capricious. (Organization File 3D-4186; Carrier File 81-84-98-D).
- (2) Foreman J. C. Meeker shall be allowed the remedy prescribed in Fule 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.

At the time of the occurrence giving rise to the dispute herein, claimant, with about ten years of service, was employed by the Carrier as a track foreman at Barr, Illinois, with assigned hours of 7:30 A.M. to 4:00 P.M., Monday through Friday. On October 14, 1983, claimant was instructed to attend an investigation on October 20, 1983, on the charge:

"To determine your responsibility for your failure to have in your possession a current train location lineup while operating on a main line track at Sweetwater station on October 13, 1983."

The investigation was postponed and rescheduled for October 27, 1983. Following the investigation, claimant was assessed discipline of thirty days suspension and disqualification as a track foreman.

In the investigation, on appeal, and in submission to this Board, representatives of the Organization have contended that claimant was denied a fair and impartial hearing because of being questioned by the conducting officer before questioning Carrier's witnesses. The Board finds no proper support for such contention. We have been referred to no rule in the Agreement specifying the

order in which statements will be taken, or witnesses testify in on-property disciplinary proceedings. As has been held on numerous occasions, railroad disciplinary proceedings are not court proceedings and strict rules of evidence do not apply. See Third Division Award No. 24285, among others.

Carrier's Rule 1000 of Rules of the Engineering Department provides:

"Form 153 must be used for train location information. Copy of the current line-up must be obtained and read to other members of the crew under the following conditions:

- "(a) Before placing track car, on-track equipment or Hy Rail vehicle on main track.
- "(b) Before operating any off-track equipment foul of a main track.
- "(c) Before working on or obstructing a main track."

There was substantial evidence in the investigation, including claimant's statement, that about 12:30 P.M., October 13, 1983, claimant set on and operated a hy-rail vehicle on single track main line territory without a current train location line-up in his possession. The previous line-up that claimant had expired at 12:01 P.M.

The claimant contended that he attempted to use a telephone at Sweetwater, Illinois, to obtain a line-up, but the telephone was not in working order and that, under the circumstances he acted in accordance with Rule 1002 of the Engineering Department, which reads:

"When impossible to obtain a line-up, a track car, on-track equipment or hy-rail vehicle may move on main track as the way is seen or known to be clear, using special care. Protection must be provided when visibility is restricted.

The Carrier contends that it was not impossible for claimant to obtain a current line-up and that he did not in fact know that the way was clear; that claimant was working in non-signal, single track territory, where trains, governed by train orders, operate in both directions. The Carrier contends, as it did in the handling of the dispute on the property, that when claimant found the telephone at Sweetwater inoperable, there were other ways for him to obtain lineups, such as use of his radio, which claimant testified was operable, or he could have made an attempt to contact the operator at Barr, which he failed to do. It has

also been pointed out that in the investigation claimant, in his defense, stated that he had a current timetable in his possession. It was established in the investigation, however, that there were no time table trains operating between South Pekin and Madison on the Illinois Division. Reliance on a timetable in such circumstances would be useless.

The proper protection of employes and equipment, is one, if not the most important duties of a foreman. In the present case claimant did not meet his responsibilities as foreman. On the entire record, there is no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

Paul W. Carter
Chairman, Neutral Member

Harry E. Simon
Carrier Member

W. A. Harper
Labor Member

DATED: Oct 3, 1985.