

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 66
Docket No. 67

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 five (5) day suspension assessed Trackman J.E. Ortiz for his alleged responsibility in connection with system dump truck #21-2386 knocking power meter pole and line down on July 21, 1984 was without just and sufficient cause. [Organization File 2D-4734; Carrier File 81-84-220-D].
- (2) Claimant J.E. Ortiz 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 employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

On July 21, 1984, Claimant was employed as a trackman on the weekend maintenance gang for Carrier's Central Division. Claimant and a track foreman were using a dump truck to fill in a washout. The foreman backed up the truck approximately 50-60 feet, while Claimant, from outside the truck, made sure the truck was clear of obstructions. The foreman began to dump the load, and started to lower the box. While it was being lowered, a corner of the box hit electrical wires, broke them, and pulled down part of an electrical pole.

As a consequence, Claimant was notified to report for investigation, to be conducted on July 26, 1984, on the charge:

"Your responsibility in connection with system dump #21-2386 knocking power metal pole and line down at the Broadway Crossing on the Ankeny Subdivision at 3:30 p.m. on July 21, 1984."

The investigation was conducted as scheduled on July 26, 1984. A copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

The Organization contends that the Carrier has failed to meet its burden of proof; it has not shown how Claimant is responsible for the proven damage to the line and pole. The Organization asserts that the Claimant was performing his duties

as instructed.

The Carrier contends that the Claimant was responsible for ensuring that the truck had adequate clearance; if the Claimant had been performing his duties properly, the accident would not have occurred. The Carrier asserts that the charge was proven and that the assessed discipline was warranted.

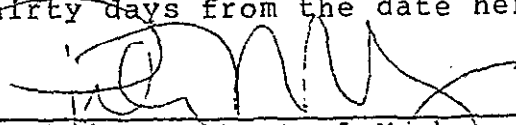
This Board has reviewed all of the evidence and testimony in this case, and it is clear that the Claimant was assigned the responsibility of walking behind the dump truck to make sure that the truck would not back into anything while another employee backed up the truck for approximately 50-60 feet. The Claimant apparently performed this task without any problem. The truck was clear of obstructions during the entire time that it moved backwards. It was only when the truck began to dump its load that the front-end corner of the dump truck hit the electrical wires and broke them. The Claimant apparently did not see the accident was about to happen until it was too late. The Claimant was stationed behind the truck, and he was not in the front of the truck watching the front end tilt upward as the truck dumped its load.


The Carrier charged the Claimant with the responsibility for failing to tell the foreman that the truck was about to hit the power line, not when the truck was backing up, but when it was dumping its load.

This Board has reviewed the transcript, and based upon the evidence, it must find that the Carrier did not meet its burden of proof that the Claimant failed to follow the orders and was thereby responsible for the accident. There is no showing in the record that the Claimant, who was positioned behind the truck to make sure that it would not back into anything, was also in position to see if the top front part of the dump truck would actually hit the overhead wires when the driver decided to dump the load. Moreover, the Claimant apparently was not in the proper position to see the relationship between the front corner of the dump truck and the wires when the truck moved up and back in order to perform the dumping procedure. Just because an accident happened does not necessarily mean that the Claimant failed to perform his assignment or, in some way, neglected one of his responsibilities. Under the circumstances, this Board finds that the Carrier has failed to present sufficient evidence of any violation by the Claimant that merits discipline. Hence, the suspension should be rescinded.

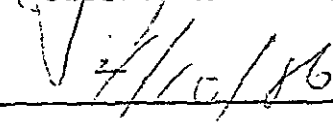
AWARD:

Claim sustained. The Carrier is required to comply with this Award within thirty days from the date hereof.


Chairman, Neutral Member


Carrier Member


Labor Member

Date:  7/10/86