

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 68  
Docket No. 71

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 sixty (60) day suspension assessed Trackman D.L. Walker for failing to follow instructions on October 25, 1983 was without just and sufficient cause and in violation of the Agreement. (Organization File 8D-4240; Carrier File 81-84-115-D)
- (2) Claimant D.L. Walker 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.

Claimant herein was employed as a trackman at the Carrier's Mitchell Yard facility. Prior to October 25, 1983, Claimant had injured his hand and was performing light duty. On October 25, 1983, Claimant called his supervisor and reported off due to pain in his hand. Claimant's supervisor told Claimant to report to the office for an examination by Carrier's physician; when Claimant refused to report, his supervisor told Claimant that he would pick Claimant up at home and drive Claimant to the office. Claimant's supervisor subsequently went to Claimant's house but Claimant was not at home.

Claimant then was directed to attend a formal investigation on the charge:

Your responsibility in connection with your failure to properly

follow instructions as given by Roadmaster Mr. Welker at Mitchell Yard while employed as trackman on October 25, 1983.

After several postponements, the investigation was conducted on January 6, 1984; Claimant was not present. 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.

Rule 19(d), referred to in the claim, provides:

If the charge against the employee is not sustained it shall be stricken from the record. If the employee has been removed from position held, reinstatement will be made with all rights unimpaired and payment allowed for the assigned working hours actually lost while out of service of the Company, at not less than the rate of pay of position formerly held, less earnings in outside employment, or for the difference in rate of pay earned, if in the service. An employee who has earnings from outside employment may deduct from those earnings actual necessary expenses in securing and performing work.

This Board has reviewed the evidence and testimony in this case; and we find that with respect to the Organization's procedural claims, the Claimant was granted all of his due process rights. Although the Organization claims that the Claimant was not afforded the opportunity to be present at the investigation and hear the evidence against him, the record is clear that on four previous occasions, the time of the hearing was changed at the request of the Organization. Moreover, at the hearing on January 6, 1984, the Organization's representative did not even know the reason for the Claimant's absence. Apparently, the Claimant had neglected to keep his representative advised of his absence on the date of the hearing. Consequently, the procedural claims are denied.

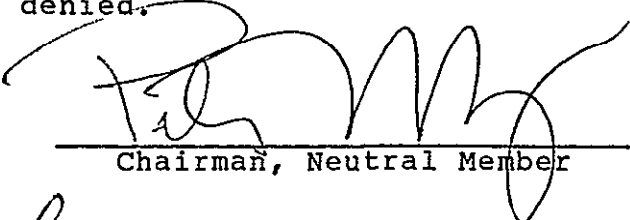
With respect to the substantive claims, there is sufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of failing to protect his assignment

and comply with the roadmaster's instructions.


Finally, the Claimant's employment record indicates that he had previously received a 45-day suspension. Hence, this Board cannot find that the 60-day suspension was unreasonable, arbitrary, or capricious, and we will not set it aside.

AWARD:

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Employee Member

Date: Sept 23, 1986