

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 74  
Docket No. 83

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 disqualification from yard cleaner operator of M. Martinez was without just and sufficient cause and on the basis of an unproven charge. [Organization File 3D-4698; Carrier File 81-85-7]
- (2) Claimant M. Martinez shall have his seniority date as yard cleaner operator reinstated and shall be compensated for all wage loss suffered by Carrier's improper disqualification."

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.

As of June 1, 1984, Claimant was assigned to operate a yard cleaner. On June 25, 1984, during his probationary period, Claimant was notified that he was disqualified as operator of the yard cleaner. Claimant subsequently requested a hearing, which was held on July 18, 1984. A copy of the transcript has been made a part of the record. We find that the hearing was conducted in a fair and impartial manner.


This Board has reviewed the evidence and testimony in this case, and we find that there is no evidence in the record that the disqualification of the Claimant during his probationary period was arbitrary or capricious. Hence, this claim must be


denied.

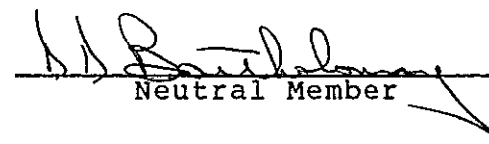
It is well settled that the burden of proof is on the employee to demonstrate that his disqualification during a probationary period is arbitrary or capricious in order to have it set aside. The record in this case makes it clear that the Claimant was not properly maintaining the Yard Cleaner Machine. The Claimant was not lubricating it or replacing the brushes as needed or keeping the oil at the appropriate level. Moreover, about a week before the Claimant's disqualification, he was warned by a supervisor that he must improve his performance or face disqualification. He did not improve, and he was subsequently disqualified. There is no evidence that the action taken by the Carrier was unreasonable, arbitrary, or capricious.

AWARD:

Claim denied:

  
Chairman, Neutral Member

  
Carrier Member

  
Neutral Member

Date:

October 6, 1986