

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 87
Docket No. 97

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 ten (10) day suspension assessed Trackman S. Smith was without just and sufficient cause and on the basis of an unproven charge. [Organization File 2D-4823; Carrier File 81-85-2-D]
- (2) Trackman S. Smith is entitled to the remedy as 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.

On August 11, 1984, Claimant sustained an on-the-job injury when he tripped, stumbled, and fell against a rail. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for failure to perform your duties in a safe manner, resulting in personal injury to yourself, while employed as a trackman at Mile Post 63.95, Carlisle, Iowa on the Trenton Subdivision, on August 11, 1984.

The investigation was held as scheduled, and 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.


This Board has reviewed the evidence and testimony in this case, and we find that there is insufficient evidence to support the Carrier's finding that the Claimant failed to perform his duties in a safe manner.

The record is clear that the Claimant tripped and fell, causing

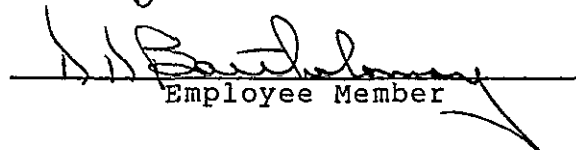
an injury to his leg. However, the Carrier has not produced any evidence to support its contention that the Claimant had failed to look out for his own safety or failed to be careful prior to his accident. The fact that someone trips and incurs an injury is not sufficient evidence to show that an individual was not abiding by Carrier rules or was failing to perform his duties in a safe manner. Accidents do happen; and if the Carrier wants to impose discipline for them, it must present probative evidence that the Claimant was in some way negligent or failed to perform his duties in a safe manner. Such proof is lacking in this record, and we therefore must sustain the claim.

Award:

Claim sustained.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: April 3, 1987