

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 88
Docket No. 98

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 forty-five (45) day suspension and disqualification as a Common Machine Operator assessed Machine Operator L.J. Lundberg is unduly harsh and excessive. [Organization 4D-4956; Carrier File 81-85-53-D]
- (2) Claimant L.J. Lundberg is entitled to 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 September 27, 1984, while Claimant was operating a boom truck to dump excess rock, the raised boom struck and broke a signal wire. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility in connection with your failure to perform your duties when operating Boom Truck, System No. 21-3109 which struck and tore down aerial signal cable at MP 231.6 at approximately 4:35 P.M. on September 27, 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.

The Organization contends that the signal wire was a low-hanging wire; high voltage wires normally are higher than the 14 feet at which the signal wire was hanging. The normal high voltage wire could not be struck by the boom as was the signal wire. The Organization also

points out that Carrier's Roadmaster had observed Claimant operate the boom truck on several occasions; the Roadmaster had not noted any exceptions during these observations. The Organization argues that this Division repeatedly has held that when discipline is arbitrary, capricious, excessive, or unwarranted, it cannot stand. The Organization therefore argues that the claim should be sustained.

Carrier argues that the charge against Claimant was proven, and the assessed discipline was warranted. Claimant operated the boom truck in a negligent manner, with the boom in the raised position. Carrier contends that had Claimant not struck the signal wire, the raised boom might have caused more serious damage as Claimant drove on the highway. Carrier asserts that based on Claimant's prior record and the facts in this case, the assessed discipline was neither arbitrary nor unreasonable. Carrier contends that the claim should be denied in its entirety.

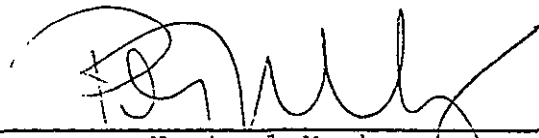
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. There is no question that the Claimant was negligent in the operation of his truck and that he was at fault in causing the accident and resulting damage.

Once this Board has determined that a claimant was properly found guilty, we next turn our attention to the extent of the discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, the Grievant has been disciplined on several occasions in the past for poor and negligent performance while

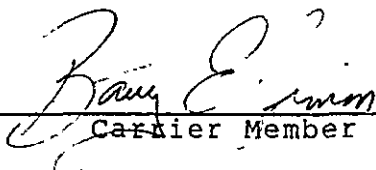
performing similar job duties. He apparently has been unable to reform his behavior. This Board sees nothing unreasonable with the 45-day suspension in this case given the prior record of the Claimant. Hopefully, the stiff discipline will encourage the Claimant to reform his behavior.

Award:

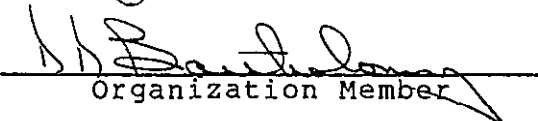
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: October 22, 1987