

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 90
Docket No. 100

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 thirty (30) day suspension assessed Track Foreman W.J. Frasher was unwarranted, unjust and must not stand.
[Organization File 7D-5158; Carrier File 81-85-93-D]
- (2) Claimant W.J. Frasher 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 December 11, 1984, Claimant was assisting a crane operator; the boom of the crane struck electrical wires and damaged both the cables and the poles. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for Ohio Crane 17-1776 knocking down of electrical wires at M.P. 46.9 on the St. James Subdivision at Belle Plaine, MN at approximately 9:30 A.M. on December 11, 1984 while assigned as a Track Foreman.

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 Carrier has failed to establish Claimant's responsibility for the incident. When the incident occurred, Claimant was flagging the road crossing; moreover, Claimant knew that the crane operator was aware of the wires. The Organization

asserts that Carrier has not shown that Claimant acted in an unsafe or irresponsible manner. The Organization argues that when discipline is excessive, arbitrary, capricious, or unwarranted, the discipline cannot stand. The Organization therefore contends that the claim should be sustained.

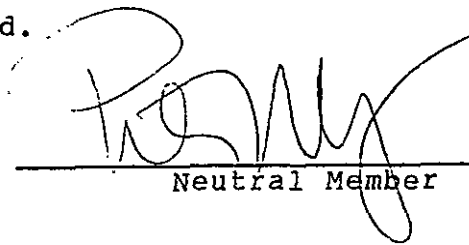
The Carrier argues that the charges against Claimant were proven, and the assessed discipline was warranted. Carrier points out that because the wires were knocked down, it is obvious that Claimant did not make sure that there was adequate clearance for the crane and the boom. Moreover, if the boom is not secured, it is possible that the boom will bounce as the crane moves. Carrier contends that it was reasonable for it to conclude that Claimant was negligent in the performance of his duties. The assessed discipline was not arbitrary or unreasonable, and 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 not sufficient evidence in the record to support the finding that the Claimant was guilty of being responsible for the crane accident. Hence, the claim should be sustained.

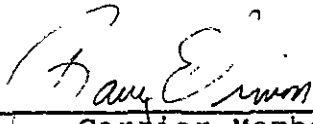
The record makes it clear that the Claimant was four car lengths away from the accident when it occurred. The Claimant had observed the crane on his way to the front car to do the flagging and did not believe that there was any problem with the angle of the crane. The Claimant was aware that the crane operator knew about the overhead wires, and the Claimant went about his own business. He can hardly be held responsible for the accident that occurred later.

Award:

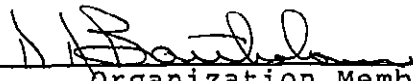
Claim sustained.



Neutral Member



Carrier Member



Organization Member

Date: October 22, 1987