

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 34

STATEMENT OF CLAIM:

Appeal of Claimant Jim Fredette's five-day suspension from
the Carrier's service.

FINDINGS:

On August 4, 1995, the Carrier notified Claimant Jim Fredette that a formal investigation was being scheduled to determine the his responsibility, if any, in connection with a vehicle accident in which he was involved on July 29, 1995, that allegedly resulted in personal injuries, and damage to Carrier property. Claimant was also charged with a late reporting of the accident and personal injuries.

After many postponements, the hearing was finally held on February 15, 1996, and continued on March 6, 1996. By letter dated March 21, 1996, the Carrier informed the Claimant that he had been found guilty of all charges and was being assessed a five-day suspension.

The parties being unable to resolve the issues, this matter comes before this Board.

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 being involved in a one-vehicle accident on July 29, 1995, as a result of which

he suffered personal injuries and caused destruction of Carrier property.

The record reveals that on July 29, 1995, the Claimant was operating a Carrier pick-up truck at approximately 8 p.m. at which time he ran off the road, possibly in an effort to avoid an animal, and caused damage to the vehicle, and an injury to himself. There was no other vehicle or individual involved in the accident. Therefore, the Claimant was clearly at fault.

The Carrier subsequently charged the Claimant with a violation of four rules including being involved in a vehicle accident on July 29, 1995, sustaining personal injuries, late reporting of an injury and vehicle accident, and destruction of Carrier property.

The Claimant introduced evidence from doctors indicating that as a result of the injury he may have had some memory loss and other neurological problems. It is possible that some of those injuries caused his apparent inability to place the date and time of the accident or remember any of the things that led up to the accident. Consequently, this Board finds that it was inappropriate for the Carrier to find the Claimant guilty of late reporting of the injury and vehicle accident because the evidence appears to demonstrate he may not have remembered that he was involved in one because of his head injuries.

However, with respect to the other three charges against the Claimant, this Board finds that it has been proven with sufficient evidence that he was involved in a vehicle

accident on July 29, 1995, that resulted in personal injuries and damage to Carrier property. Therefore, the Carrier had an absolute right to impose discipline against the Claimant.

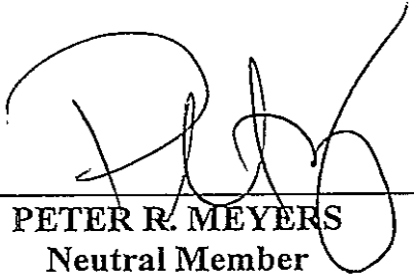
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was assessed a five-day actual suspension for the four rule violations charged by the Carrier. Since this Board has found that he was guilty of only three of the four rule violations, and he was not guilty for the late reporting of the injury or vehicle accident, we find that the five-day discipline shall be reduced to a three-day discipline and that the Claimant shall be made whole for the two extra days of suspension which related to the late reporting of the injury and vehicle accident.

AWARD:

Claim sustained in part. The five-day suspension of the Claimant is hereby reduced to a three-day suspension because the Claimant should have been found not guilty of the more serious charge of late reporting of an injury and vehicle accident. The

Claimant shall be made whole for the additional two days that he was wrongfully suspended.



PETER R. MEYERS
Neutral Member

Dated: May 15, 1996