

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

Case No. 4

PARTIES: SOO LINE RAILROAD COMPANY
TO :
DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Appeal of Claimant James O. Jones', Machine
Operator, dismissal on December 17, 1990.

FINDINGS:

Claimant, James O. Jones, was employed by the Carrier as a machine operator.

On December 17, 1990, the Carrier notified the Claimant that he was dismissed from service as a result of an accident that occurred on December 12, 1990, at the Irving Park and York Roads crossing in Bensenville, Illinois, when the anchormatic that he was operating struck a tamper spiker, operated by J. E. Reynolds, in the rear of Reynolds' machine. That incident resulted in Mr. Reynolds being thrown from his machine and sustaining back and leg injuries, causing him to be admitted to Elmhurst Memorial Hospital. On December 19, 1990, the Organization requested a hearing. On January 3, 1991, the Carrier notified the Organization and the Claimant of a hearing to be held on February 8, 1991. On February 15, 1991, the Carrier notified the Claimant that his dismissal would stand. This matter then came 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 several

rule violations when he was responsible for the accident that took place on December 12, 1990.

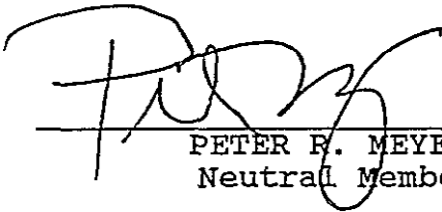
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

In the case at hand, the Claimant was terminated from employment for being responsible for the accident which damaged equipment and caused an injury. Although those were serious consequences, the record also reveals that the Claimant has been employed by the Carrier for over thirteen years; and there is no evidence of any previous safety violations or other wrongdoing. The facts of the accident indicate that the Claimant was operating a piece of equipment which he had only been working on for approximately two months. Moreover, the conditions were wet and slippery, and the Claimant testified that the accident was unavoidable given the circumstances.

This Board cannot, given the years of service of the Claimant and his seemingly good record, uphold a dismissal based upon the facts contained in the record. Consequently, we hereby reduce the dismissal to a lengthy suspension and we order that the Claimant be reinstated with no back pay. We also order that the Claimant be sent to retraining on the equipment so that he will better learn how to operate it under difficult circumstances in order to avoid a recurrence of this past serious accident.

AWARD:

Claim sustained in part. The discharge of the Claimant is hereby reduced to a lengthy suspension. The Claimant is to be reinstated with no back pay and sent to retraining on the various pieces of equipment which he will be operating.



PETER R. MEYERS
Neutral Member_____
Carrier Member_____
Organization Member

Dated: _____