

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN PACIFIC RAILWAY COMPANY

Case No. 52

STATEMENT OF CLAIM:

Appeal of Claimant Harry E. Greenwell.

FINDINGS:

On August 14, 1998, the Claimant was notified by the Carrier to appear for a formal investigation into the charge of his alleged responsibility concerning an accident which occurred on August 10, 1998, when a train struck a contractor's backhoe tractor in the vicinity of Elm Grove, Wisconsin while the Claimant was working as a flagman.

After several mutually agreed upon continuances, the hearing was conducted on September 4, and September 11, 1998. It was eventually determined that the Claimant was responsible for causing the accident which occurred on August 10, 1998.

Consequently, the Claimant was issued a five-day suspension, he was restricted from working as a flagman for a period of 2 years, he was restricted to holding laborer/special machine operator/regular machine operator positions only during the two-year restricted period, and he was instructed to attend a rules review class and be examined on the GCOR Rules for Maintenance of Way Employees on or before November 2, 1998.

The Organization filed the instant claim on behalf of the Claimant under the provisions of the Agreement.

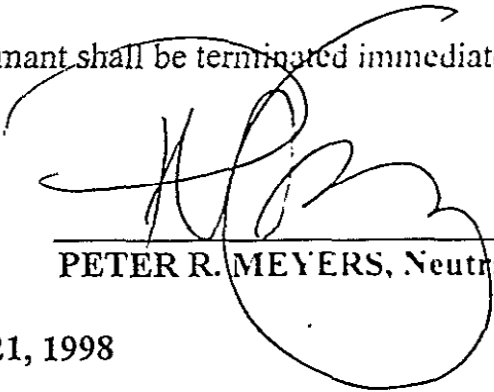
The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has not met its burden of proof that the Claimant was the individual responsible for the accident that occurred on August 10, 1998. The Carrier had a sub-contractor working in the area and Claimant apparently had a very difficult time getting the sub-contractor to follow his orders. There is no question that an accident occurred, but it is very difficult from this transcript to determine that it was the Claimant's fault. There is simply not enough evidence that the Claimant was the person responsible and that a failure on his part actually led to the accident.

Since the Carrier bears the burden of proof in all discipline cases, and it has not met that burden in this case, this Board must sustain the claim.

AWARD

Claim sustained. The Claimant is to be made whole and the suspension shall be removed from the Claimant's record. Moreover, the various restrictions that have been imposed on the Claimant shall be terminated immediately.



PETER R. MEYERS, Neutral Member

Dated: December 21, 1998