

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
Award No. 134
Docket No. 143

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO :
DISPUTE: CHICAGO & NORTH WESTERN TRANSPORTATION CO.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:

1. The disqualification as Common Machine Operator assessed D. E. Austin was unjust and excessive and on the basis of improper charges. (Organization File 4SW-1237 D; Carrier File 81-88-28).
2. Claimant Austin shall be allowed the remedy as prescribed in Rule 19(d):

"If the charge against the employe is not sustained it shall be stricken from the record. If the employe has been removed from position held, reinstatement will be made with all rights unimpaired and payment allowed for the assigned working hours actually lost while out of service of the Company, at not less than the rate of pay of position formerly held, less earnings in outside employment, for the difference in rate of pay earned, if in the service. An employe who has earnings from outside employment must deduct from those earnings actual necessary expenses in securing and performing work."

FINDINGS:

Claimant D. E. Austin was employed by Carrier as a Common Machine Operator. On October 12, 1987, Claimant was working as a Crane Operator at Sheffield, Iowa when he operated Little Giant Crane boom into an Iowa Public Service Line. Subsequently, Claimant was charged with:

"Your failure to properly perform your duties on October 12, 1987, when you failed to report incident when boom of Little Giant Crane 902 System No. 17-3309 came in contact with overhead power lines and failure to report incident as outlined in ADM-E's Bulletin No. 13 dated September 23, 1987."

An investigation was held on October 19, 1987, and as a result Claimant was disqualified as a Common Machine Operator. The

Organization thereafter filed a claim on Claimant's behalf, challenging his disqualification.

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 of failing to promptly report an incident which had occurred while he was in charge.

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 the action taken by the Carrier to have been unreasonable, arbitrary or capricious.

In the case at hand the Claimant had over eleven years of seniority. By disqualifying him from his position as a Common Machine Operator, the Claimant has been effectively removed from the opportunity to operate a number of machines. This Board finds that that discipline was much too severe given the circumstances of this incident and the length of seniority of the Claimant.

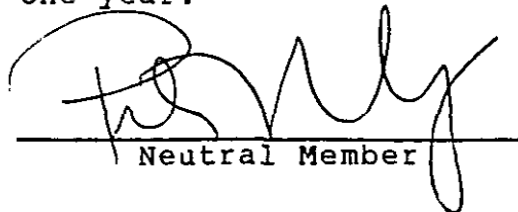
This Board finds that the Carrier acted unreasonably when it permanently disqualified the Claimant for his wrongdoing in this case. This Board finds that a one year disqualification would have been sufficient, given the circumstances, to punish the Claimant and put him on notice that he must live up to his responsibilities under the Rules in the future. Therefore, this Board hereby reduces the disqualification period to one year.

AWARD

Claim sustained in part. Permanent disqualification of the

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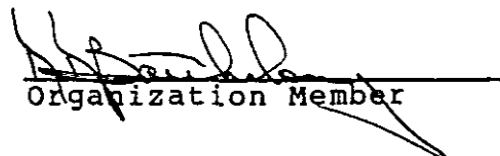
Claimant is hereby reduced to a one year disqualification and the Claimant is to be made whole for all losses resulting from that disqualification over one year.



Neutral Member



Carrier Member



Organization Member

Date: NOV 28 1989