

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 163

Award 147

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

1. The dismissal of G. R. Larson for alleged insubordination was without just and sufficient cause (Organization File 8RP-5010D; Carrier File 81-89-93).
2. Claimant G. R. Larson shall be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

Claimant G. R. Larson was employed by the Carrier as a machine operator at Marinette, Wisconsin.

On May 11, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Your responsibility for being insubordinate to a company officer when you refused to take a toxicology drug test when you were the operator of the machine that struck an underground electrical line in Stanton Street that caused severe electrical outage at the Ansal Plant in Marinette, Wisconsin on May 9, 1989.

The hearing took place on May 15, 1989. On May 23, 1989, the Carrier dismissed the Claimant for insubordination. On June 6, 1989, the Organization appealed the Carrier's decision, contending that the Carrier had no right to demand breath and urine samples from the Claimant. Thereafter, the Carrier reaffirmed its position on the basis that the Claimant was

insubordinate when he refused to submit to a breath and urine test on May 9, 1989. The Organization contends that the Carrier should not have dismissed the Claimant for his refusing to submit to testing because he had not been found guilty of causing the electrical outage at Marinette, Wisconsin on May 9, 1989, and, therefore, was not required to undergo the toxicology exam. The parties being unable to resolve the issues, this matter 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 insubordination when he refused to take the drug test that he was ordered to take by his supervisor.

The Organization argues that there was no probable cause for the supervisor to request that the Claimant take the test. However, the record reveals that the Claimant was operating a front-end loader and that while operating that loader, he struck an electrical cable, causing a power outage. Although the Claimant states that he was only following orders, the rules require that individuals involved in accidents which cause injury or damage must subject themselves to blood and alcohol tests. The supervisor properly ordered the Claimant to take the test, and he refused.

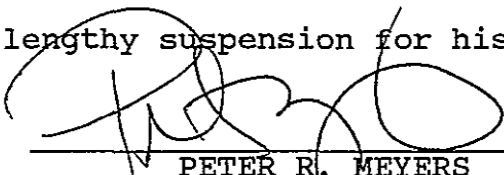
Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant was guilty of insubordination. Although insubordination is often a dismissible offense even on the first occasion, this Board notes that this Claimant has been employed by this Carrier since 1978 and has received no previous discipline. Given that unblemished record, this Board finds that the action taken by the Carrier in terminating his employment was unduly severe and unreasonable. This Board therefore reduces the discipline to a lengthy suspension, and we order that the Claimant be reinstated to his employment but without back pay.

AWARD:

Claim sustained in part. The Claimant is to be reinstated to employment but without back pay. The time off from work shall be considered a lengthy suspension for his insubordinate action.



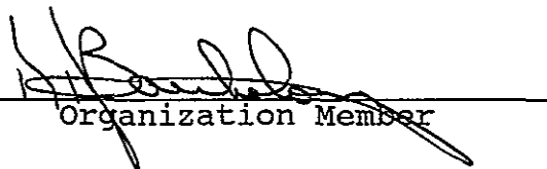
PETER R. MEYERS
Neutral Member



Carrier Member

Date: _____

7/25/91



Organization Member