

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

Case No. 166 **Award 148**

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

1. The disqualification of Foreman D. R. Menter for allegedly failing to perform his duties as a foreman was without just and sufficient cause, capricious, and unduly harsh (Organization File 4LF-2305 D; Carrier File 81-89-107).
2. Claimant D. R. Menter shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

Claimant D. R. Menter was employed by the Carrier as a foreman at Arlington, Nebraska.

On April 18, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Your responsibility to properly perform your duties which resulted in collision between Ballast Regulator and Consolidator near Arlington, Nebraska, on Monday, April 17, 1989, which also resulted in personal injuries and property damage.

The hearing took place on April 27, 1989. On May 4, 1989, the Carrier notified the Claimant that he was being disqualified as a track foreman effective May 8, 1989. On July 6, 1989, the Organization filed a claim on behalf of the Claimant claiming that he was a passenger on the regulator involved in the incident

on April 17, 1989, and had reason to believe that the handling of the regulator was under the control of a Mr. Jennings. The Carrier thereafter denied the claim, contending that the Claimant failed in his duties as track foreman and that the Organization's claim lacked support from schedule rules and agreements. 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 failing to perform his duties as foreman.

The record reveals that the Claimant was the foreman of the gang riding on a Ballast Regulator which was involved in a collision with a Consolidator and caused damage in excess of Five Thousand and 00/100 Dollars (\$5,000.00) and injury to two of the operators. At the hearing, the Claimant admitted that he assigned no one to keep an eye out to assist the operator. The record reveals that there were four machine operators besides the Claimant, any one of which who could have been assigned to watch for obstructions or personnel on the tracks. By not making such an assignment, or even doing it himself, Claimant was negligent in the performance of his duties and responsibilities as foreman.

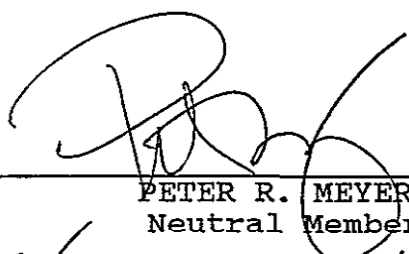
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we

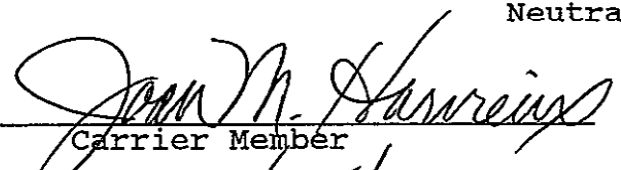
find its action to have been unreasonable, arbitrary, or capricious.

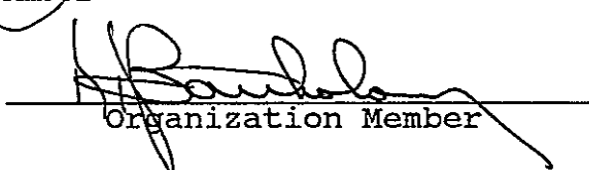
As a result of the Claimant's failure to properly perform his duties, two machine operators were injured and the Carrier sustained damage to its equipment in excess of Five Thousand and 00/100 Dollars (\$5,000.00). This Board cannot find that the Carrier's action in disqualifying the Claimant from his position of foreman was unreasonable. Therefore, the claim will be denied.

AWARD:

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Date: 7/25/91