

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

Case No. 160

Award No. 154

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

1. The disqualification of Mr. R. P. Luna as a machine operator was without just and sufficient cause, capricious, and excessive (Organization File 4LF-2256D; Carrier's File 81-89-27).
2. Claimant R. P. Luna shall now have his record cleared of the charge, have his seniority restored as a machine operator and be compensated for all wage loss suffered.

FINDINGS:

Claimant R. P. Luna was employed by the Carrier as a machine operator at Carroll, Iowa.

On August 2, 1988, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Your involvement in not properly clearing a Form "Y" train order at approximately 3:20 p.m., July 29, 1988, resulting in 734 Surfacing Gang's ballast regulator No. 17-3324 being hit by the eastbound wayfreight, Unit 4298, at Mile Post 258.05 near Carroll, Iowa.

After one postponement, the hearing took place on August 10, 1988. On August 19, 1988, the Claimant was disqualified as a machine operator. The Organization thereafter filed a claim for reinstatement of Claimant's seniority as a machine operator and revocation of the disqualification and that he be made whole for

any and all lost wages. The Carrier denied the claim.

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 not properly clearing a train order on July 29, 1988 resulting in a collision.

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 the Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.


In this case, the Claimant was permanently disqualified as a machine operator. This Board believes that discipline to be unreasonable. The Carrier had every right to disqualify this Claimant from his position and send him to retraining in effort to prevent him from making a similar error in the future. However, to permanently disqualify him from the position of machine operator is an unreasonable punishment to a young employee with seven years of seniority with the Carrier.

This Board finds that a four-year disqualification would have been sufficient and we hereby order that the Claimant be allowed to requalify as a machine operator, after sufficient training and testing, after August 19, 1992. This Board believes


that that four-year disqualification is a sufficient penalty for this serious error on the part of the Claimant. Hopefully, he will learn that he must get a confirmation before he takes action in the future.

AWARD

Claim sustained in part. The permanent disqualification is hereby reduced to a four-year disqualification from the position of machine operator. The Claimant shall be allowed to requalify as a machine operator after August 19, 1992.



PETER R. MEYERS
Neutral Member



Carrier Member
Dated: April 24, 1992



Organization Member