

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

Case No. 186

Award No. 147

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

1. The dismissal and disqualification of Assistant Foreman J. M. Sewell for alleged vandalism to Company property was without just and sufficient cause, unwarranted, capricious and an abuse of Carrier's discretion (Organization File 4PG-3338D; Carrier File 81-90-80).
2. Claimant J. M. Sewell shall be allowed the remedy prescribed in Rule 19 of the Agreement.

FINDINGS

Claimant J. M. Sewell, an Assistant Foreman, was dismissed from service after admitting to vandalizing Carrier property. On June 20, 1990, Carrier offered to reinstate Claimant on a leniency basis but denied him his Assistant Foreman rights. On October 5, 1990, the Carrier reinstated the Claimant as a Trackman while at the same time allowing him to progress his claim for his Assistant Foreman's seniority rights and compensation for lost time.

The claim has been denied and the parties being unable to resolve this issue, 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 violating

Carrier Rules 607, 608, 609, and 612A when he vandalized several pieces of Carrier equipment and the personal property of an employee assigned under his supervision. Claimant admits the wrongdoing and unsuccessfully tries to justify it.

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.

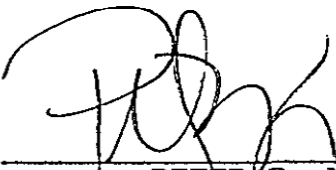
In the case at hand, although the Claimant was originally discharged, he was later reinstated as a trackman but his Assistant Foreman rights were terminated and he suffered approximately four months of lost pay. The record reveals that the Claimant has been employed by the Carrier since July of 1977 and although he has had some disciplinary problems over the years, his record is relatively clean. He received two 10-day deferred suspensions, one in 1980, and the other in 1983.

This Board finds that it was appropriate for the Carrier to terminate the Claimant's Assistant Foreman rights. His actions on May 23, 1990 were outrageous and not in keeping with the type of behavior that the Carrier wants its foremen to exhibit. However, this Board finds that a four-month suspension for the vandalism incident is simply too severe in conjunction with the termination of Assistant Foreman rights. The Carrier offered the Claimant reinstatement on June 20, 1990, only two weeks following the date on which he was dismissed. The Organization declined


the offer because it wanted a reinstatement of the Claimant's Assistant Foreman rights. This Board believes that the two-week suspension was sufficient time off since the Claimant also lost his Assistant Foreman rights. Consequently, we find that the claim will be sustained in part and the time lost by the Claimant shall be paid minus the two weeks in June of 1990. The claim for the restoration of the Assistant Foreman rights will be denied.

AWARD

Claim sustained in part. The claim for the restoration of the Claimant's Assistant Foreman rights is denied. The claim relating to the suspension is allowed in part and the suspension will be reduced to a two-week suspension. Claimant is to be paid backpay for the period between June 20, 1990, and his eventual reinstatement.



PETER R. MEYERS
Neutral Member



Joan M. Lawrence
Carrier Member



H. B. Baulch
Organization Member

Dated: May 10, 1993