

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

Case No. 188

Award No. 169

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

1. The permanent disqualification from all machine operator positions and five (5) day suspension assessed Mr. R. G. Paulson for his alleged responsibility in a collision between a Mark III Tamper and a ballast regulator was without just and sufficient cause and unsupported (Organization File 8KB-4593D; Carrier File 81-90-82).
2. Machine Operator R. G. Paulson shall have all his machine operators seniority restored, he shall be compensated for all wage loss suffered and have the discipline removed from his personal record.

FINDINGS

On May 2, 1990, the Claimant, R. G. Paulson, a machine operator, was operating a ballast regulator in the Milwaukee, Wisconsin area when he collided his machine with a Mark III tamper. After an investigation, the Carrier suspended the Claimant for five days and disqualified him from all machine operator positions. The Organization submitted a claim on behalf of the Claimant seeking revocation of the suspension and a reinstatement of his machine operator rights.

The claim was denied and the parties being unable to resolve the 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 negligently operating the ballast regular causing it to collide with the Mark III tamper. The record reveals that the Claimant was not properly following the Carrier's regulations by maintaining the proper distance and speed so that he would be in a position to stop for either other employees or equipment. It was the Claimant's responsibility to be in full control of the ballast regulator and he was not.

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, the Claimant was issued a five-day actual suspension and permanent disqualification from all machine operator positions.

The Claimant has been working for the Carrier since September of 1975. There is no question that he was guilty of not properly operating his equipment on the date in question. However, to permanently remove all of his machine operator rights and opportunities is simply too severe a discipline for this accident. This Board finds that the five-day actual suspension should stand but the disqualification from all machine operator positions should be reduced to a period of three years. After that time, the Claimant shall be allowed to bid for, train, and be allowed to qualify for the operation of the various machines.

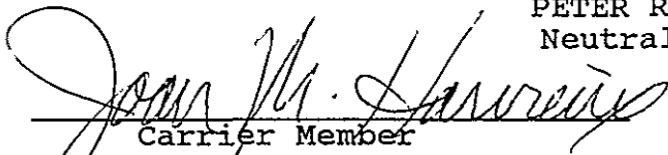
Carrier's action with respect to the permanent disqualification was simply too severe and this Board views it as unreasonable and arbitrary.

AWARD

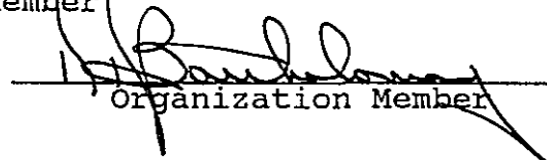
Claim sustained in part. The five-day suspension of the Claimant shall remain. The permanent disqualification of the Claimant from machine operator positions shall be reduced to a three-year disqualification.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: May 10, 1993