

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

Case No. 213

Award No. 184

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

1. The dismissal of Machine Operator T. W. Prough for allegedly occupying the main line without proper protection was without just and sufficient cause, inappropriate, excessive and capricious (Organization File 2PG-3427D; Carrier File 81-92-23).
2. Machine Operator T. W. Prough shall now be allowed the remedy provided in Rule 19(d).

FINDINGS:

On August 26, 1991, the Claimant operated a ballast regulator on the main track between Des Moines and McCallsburgh. Subsequently, the Claimant was notified to appear for a hearing to determine his responsibility for his actions in which he occupied the main line without permission on the date in question. Claimant was found guilty and dismissed from service and was later reinstated as a trackman on September 24, 1992. However, the one year that he was off from work and his disqualification as a machine operator remained.

The instant claim was filed by the Organization on behalf of the Claimant and the parties being unable to resolve the issue, this matter comes 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

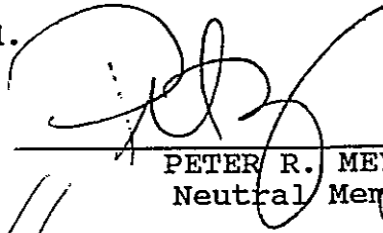
to support the finding that the Claimant was guilty of occupying the main line trackage without authority. Claimant admits that he only "thought" he had permission; he could not prove that he had permission.

Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, 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.

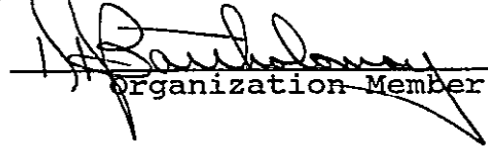
In the case at hand, the Claimant's original dismissal was reduced to a one-year suspension and disqualification as a machine operator. Given the serious nature of the offense of which he was found guilty, this Board cannot find that the Carrier acted unreasonably when it suspended him and disqualified him from his position of a machine operator. The record reveals that the Claimant is currently working for the Carrier as a trackman. If the Carrier believes that he should have his machine operator rights reinstated, it can so order. This Board is without a sufficient basis to do that since we do not find that the Carrier acted unreasonably, arbitrarily, or capriciously.

AWARD:

Claim denied.

  
\_\_\_\_\_  
PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

Dated: January 27, 1994