

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 191

AWARD 186

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The five (5) day suspension assessed Track Supervisor L. L. Soren for alleged failure to properly follow track maintenance procedures on June 27, 1990 was without just and sufficient cause and capricious (Organization File 2PG-3349D; Carrier File 81-90-104).
2. Track Supervisor L. L. Soren shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

The Claimant, L. L. Soren, was employed by the Carrier as a track supervisor for the Jewell Subdivision.

On June 27, 1990, the Claimant's crew installed eight crossties at Mile Post 53.7 before noon. In the afternoon, two Carrier supervisors inspected the area where the crossties were installed and determined that the installation was not done according to Rule 1005 which explains the proper procedure to be taken when installing crossties in hot weather.

Subsequently, the Claimant was notified to appear for a formal investigation to determine his responsibility for not following Carrier procedures when his crew installed

cross ties in 90-degree weather. He was found guilty as charged and assessed a five-day suspension. The Organization filed a claim on behalf of the Claimant but it was denied.

The parties not being able 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 violating Carrier Rules when he improperly installed cross ties on June 27, 1991. Although the Organization argues that the Claimant completed installing the ties before the temperature reached 90 degrees, the Claimant admitted in his testimony that on that date it was going to be in the "mid-90's". He also admitted that he was aware of the Track Maintenance Handbook and the procedures contained therein. He further admitted that he did not tell the other track employees to adjust the ties after he observed that the ties were installed in violation of the Rules.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next must 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 actions to have been unreasonable, arbitrary, or capricious.

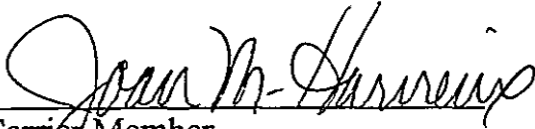
In the case at hand, the Claimant had previously received a ten-day deferred suspension, a letter of reprimand, a written warning, and he had been disqualified as a track foreman. Given that previous disciplinary background, this Board cannot find that the disciplinary action taken by the Carrier in this case was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.

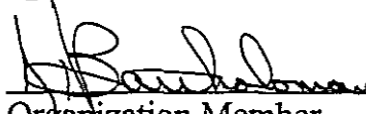


PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 6/3/94



Organization Member

DATED: June 3, 1994