

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 195

Award 188

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The five (5) day suspension and disqualification of Common Class Machine Operator Harvey R. Johnson for his alleged responsibility for the boom truck he was operating striking an overhead pedestrian bridge was without just and sufficient cause and based on an unproven and disproven charge (Organization File 8KB-4654D; Carrier File 81-90-140).
2. Claimant Harvey R. Johnson shall now be compensated for all wage loss suffered, have his Common Machine Operator rights restored unimpaired and have the discipline removed from his personal file.

FINDINGS:

On September 11, 1990, Claimant Harvey Johnson was operating a boom truck in the Nelson, Illinois area when his boom and bucket struck a pedestrian overpass, knocking down a supporting pier, resulting in the bridge collapsing onto a truck. The damage was estimated in excess of \$50,000.00.

Subsequently, the Claimant was notified to appear for a formal investigation to determine his responsibility in the aforementioned incident. The Claimant was found guilty as charged and assessed a five-day suspension and disqualified as a common

machine operator. The Organization filed a claim on behalf of the Claimant and it was denied.

The parties being unable to resolve the issue, this matter now comes before this Board.

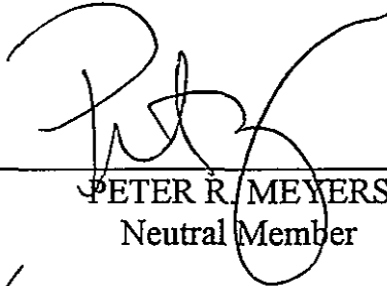
This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not presented sufficient evidence to meet its burden of proof that the Claimant was responsible for the boom truck striking an overhead pedestrian bridge. There is no question that an accident occurred on the date in question but the Carrier has failed to produce any witnesses who actually saw the accident and could testify that the Claimant was performing his job improperly. On the other hand, the Organization has cited testimony of some of the witnesses who indicated that the boom was down when it was under the supervision of the Claimant.

It is fundamental that in discipline cases the Carrier bears a burden of proof. It is not sufficient that an accident occurred for the Carrier to issue discipline to a particular employee. The Carrier must prove with sufficient evidence that the Claimant is responsible for the accident. In this case, the Carrier has failed to meet its burden of proof.

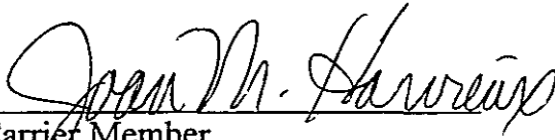
Since the Carrier has not met its burden of proof in this case, the claim will be sustained. The Claimant shall be given back his common machine operator rights and he shall be made whole for the loss of those common machine operator rights and for the five days of pay that he lost as a result of the suspension.

AWARD

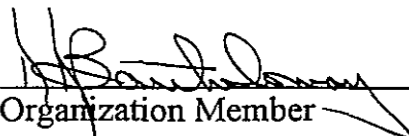
Claim sustained. Claimant shall be given back his common machine operator rights and he shall be made whole for the five days of pay that he lost as a result of the suspension and any pay that he lost as a result of losing his common machine operator rights.



PETER R. MEYERS
Neutral Member



Carrier Member
DATED: June 3, 1994



Organization Member
DATED: June 3, 1994