

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 196

Award 189

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The five (5) day suspension and disqualification of Foreman P. Messerschmidt for allegedly failing to properly perform his duties on October 3, 1990 was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Organization File 4PG-3373D; Carrier File 81-91-7).
2. Claimant P. Messerschmidt shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

On October 16, 1990, Claimant Messerschmidt was notified to attend a formal investigation on the following charge:

....your responsibility for failure to remove a defective rail or take remedial action which was found by Dapco test car 080 on October 3, 1990, rail No. 12, at Mile Post 305.9, on the West Iowa Subdivision. And your failure to properly perform your duty in filling out "cutting and repairing" CWR report accurately as required by the Track Maintenance Handbook, on page 25, Rule 451, for rail changed on October 3 and October 4, 1990, which was brought to the attention of your supervisor on October 10, 1990.

The incidents leading to this charge began October 3, 1990, when the Claimant, his crew, and a welding gang were instructed to follow a Dapco rail test car and replace defective rails which were marked by the test car. In addition, the Claimant was to fill

out cutting and repairing CWR reports at the end of each day's activities. These reports were then reviewed by a track supervisor.

On October 9, 1990, a track supervisor discovered that a defective rail at Mile Post 305.9 had not been replaced and after he reviewed the CWR report, he found several discrepancies between the Claimant's reports and the reports submitted by the welding gang. Based on this, an investigation was held into the matter.

The Organization objected to the handling of the investigation alleging it was denied the opportunity to have all the employees who were involved in the work on October 3, 1990, appear as witnesses. The investigation continued as scheduled.

As a result of the hearing, the Claimant was found guilty as charged and assessed a five-day suspension and disqualified as a foreman.

The Organization took exception to the discipline assessed and filed a claim on behalf of the Claimant contending that he was not afforded a fair and impartial hearing. The Organization alleges that the Carrier had prejudged the Claimant guilty of the charge before the conclusion of the investigation. The claim was denied.

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

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit. The Carrier does not have the responsibility of calling all of the witnesses that the Organization believes will be helpful to the Organization's case. If the Organization is aware of individuals who have knowledge of the facts of the

incident giving rise to the discipline, the Organization must make sure that those individuals appear at the hearing. This Board finds that the investigation in this case was proper and that the rights of the Claimant were protected.

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 failing to change out the rail that had been found to be defective. In addition, the record reveals that the Claimant did not place any reference marks on the rail as he was required to do when a defect was located. Those actions on the part of the Claimant are clear violations 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 action to have been unreasonable, arbitrary, or capricious.

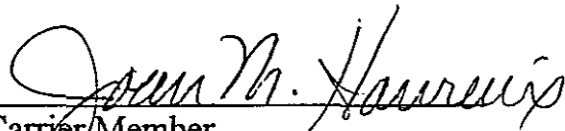
The Claimant's personal record indicates that he has previously received letters of reprimand and prior discipline for not performing his duties properly. Given the nature of the wrongdoing in this case and the previous record of the Claimant, this Board does not believe that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued a five-day suspension to the Claimant and disqualified him as foreman. Therefore, the claim will be denied.

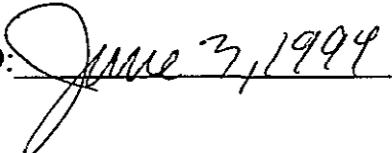
AWARD

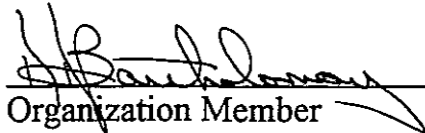
Claim denied.

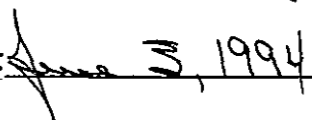


PETER R. MEYERS
Neutral Member



Carrier Member
DATED: 
June 3, 1994



Organization Member
DATED: 
June 3, 1994