

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 203

AWARD 191

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The ten (10) day suspension assessed Ballast Regulator Operator M. J. Kuk for his alleged responsibility in sustaining a personal injury on June 25, 1991 was without just and sufficient cause and based on an unproven charge (Organization File 8KB-4810D; Carrier File 81-91-171).
2. Ballast Regulator Operator M. J. Kuk shall now have the discipline removed from his personal record and he shall be compensated for all wage loss suffered.

FINDINGS:

The Organization filed a claim on behalf of the Claimant, M. J. Kuk, when he was assessed a ten-day suspension for sustaining a personal injury while on duty.

On June 25, 1991, Claimant Kuk was operating a ballast regulator when the plow became jammed by rocks. Claimant proceeded to remove the rocks and upon doing so, the plow sprung forward and cut his thumb requiring the Claimant to receive five stitches.

A hearing was held to determine the Claimant's responsibility for his "actions which led to an injury" to himself. Based on the testimony and evidence adduced at the hearing, Claimant was found guilty and he was assessed a ten-day suspension.

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

Board.

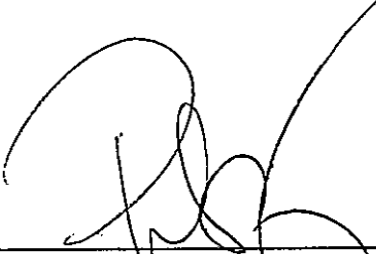
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to perform his duties in a safe manner which led to a personal injury. The Claimant placed himself in a dangerous and vulnerable position when he attempted to dislodge ballast from the jammed plow with his hand. The Claimant acknowledged that he, as well as most machine operators, uses tools for that practice. He used as an excuse that he "had a lot on his mind" and that is why he acted in such a careless manner.

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.

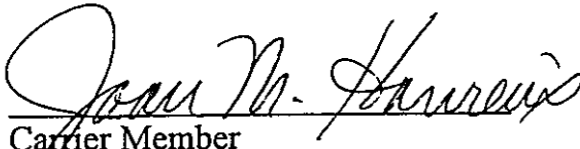
The Claimant's personnel record in this case indicates that he had previously been discharged and received a five-day suspension under the new disciplinary procedure. Given the nature of the wrongdoing in this case, and the previous record of the Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it imposed a ten-day suspension. The Safety Rules must be followed and this Carrier has every right to impose discipline in order to encourage employees to respect those rules.

AWARD

Claim denied.

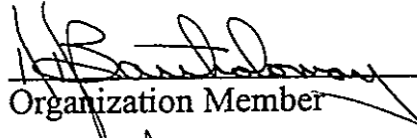


PETER R. MEYERS
Neutral Member



Joan M. Lawrence
Carrier Member

DATED: June 3, 1994



H. B. Bantam
Organization Member

DATED: June 3, 1994