

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

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

Case No. 224

Award No. 205

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The disqualification as a foreman of Mr. B. Montoya was without just and sufficient cause, inappropriate, excessive and capricious (System File 2PG-3492D; Carrier's File 81-92-127).
2. Mr. B. Montoya shall now have Discipline Notice No. 157 removed from his record and he shall be made whole for all wage loss suffered as provided in Rule 19(d).

FINDINGS:

On July 9, 1992, the Claimant, a section foreman, was assigned to change defective rails that had been detected by rail test car. A defect was detected by the test car at Mile Post 81.6. The Claimant and his crew replaced a 16-foot section.

On July 15, 1992, the Claimant was notified to attend a formal investigation on the charge of not properly placing reference marks and removing the entire rail when changing a defective rail.

At the hearing, it was determined that the Claimant had marked the rail at mile Post 81.6 improperly by using chalk. In addition, "the rules required the Claimant to change out the entire rail" when detected with this type of defect. The Claimant had only

replaced a 16-foot section of a 39-foot rail. Based on the findings, the Claimant was found guilty and as a result, he was disqualified as a track foreman.

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

This Board has reviewed the procedural argument raised by the Organization and we find it to be without merit. We find that the charge was specific enough to make the Claimant and the Organization aware of the charges against the Claimant.

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 place the proper reference marks on the rail as required by the rules. The Claimant, at the hearing, admitted that he did not put adequate marks on the rail and did not follow the procedures described in Rule 455.

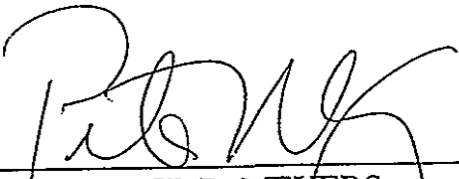
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

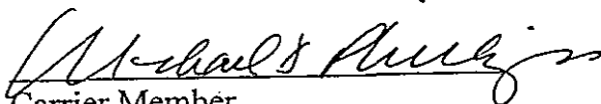
In this case, the Claimant was disqualified as foreman for his failure to follow the important rules requiring that the entire rail be changed out within 72 hours. Given the seriousness of the wrongdoing in this case, this Board cannot find that the action taken by the Carrier in disqualifying the Claimant from his foreman position was unreasonable,

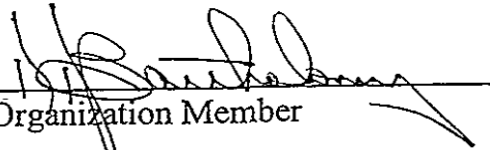
arbitrary, or capricious. Therefore, the claim must be denied.

AWARD

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

DATED: 12-1-94

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