

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

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

Case No. 235 *AWARD 211*

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal* of Assistant Foreman P. R. Messerschmidt for his alleged responsibility in backing a Company vehicle into another vehicle on July 10, 1993 was without just and sufficient cause, in violation of the Agreement and based on an unproven charge (Organization File 4PG-3567D; Carrier File 81-93-129)
2. Assistant Foreman P. R. Messerschmidt shall now be allowed the remedy prescribed in Rule 19(d).

* The dismissal was later reduced to a suspension.

FINDINGS:

Claimant P.R. Messerschmidt was employed by the Carrier as an assistant foreman on the AFE 9 Gang working the area of Missouri Valley, Iowa.

On July 11, 1993, the Carrier was notified that one of its vehicles was involved in a hit-and-run accident which occurred in the parking lot of the Happy Chef Restaurant. Upon investigation, Roadmaster Biggerstaff found that Carrier employee K. Robinson had signed a meal ticket at the Happy Chef on that same date and approximate time. When the roadmaster questioned Mr. Robinson, he denied being involved in any accident on that date. He, however, informed the roadmaster that the Claimant was at the same restaurant around the same time on the date in question.

The roadmaster than questioned the Claimant and learned that "someone had honked at him (Claimant) and indicated that he had backed into a vehicle". The Claimant told the roadmaster that he checked "a little red car" and since there was very little damage, he left the scene.

Subsequently, the roadmaster accompanied the Claimant to the Missouri Valley Police Department where the Claimant filled out the required forms detailing the incident in question. The police then issued the Claimant a citation for failure to leave information at the scene of an accident.

Following this incident, the Carrier charged the Claimant with involving a Carrier vehicle in an accident with another vehicle causing approximately \$500 in damage. The Carrier also notified him that he must appear at a formal hearing into the charges. At the hearing, the Claimant testified that no one "honked" at him at the Happy Chef Restaurant nor did he look at a "little red car".

Because of the conflicting testimony given at the hearing, the Claimant was found guilty as charged and dismissed from service because of his previous five- and ten-day suspensions. The record was later reviewed and the dismissal was reduced to a suspension. The Claimant was allowed to return to work as a trackman, but chose instead to go into a furloughed status.

The parties not being able to resolve the issue, this matter 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 being responsible for the accident that occurred on July 11, 1993, as well as failing to stay at the scene and not properly reporting the accident as required by the rules. The record is clear, and it includes oral admissions by the Claimant, that the Claimant was in violation of Safety Rule E, Rule 803, and Rule 1103 by failing to take the proper actions after he was involved in an accident on the date in question.

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 set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

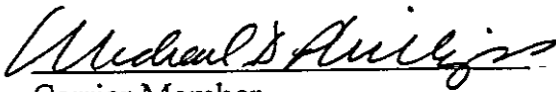
In this case, although the Claimant was originally dismissed, his dismissal was reduced to a lengthy suspension. Given the previous disciplinary background of the Claimant, which included a five- and ten-day suspension, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the suspension to the Claimant for his wrongdoing in this case. Therefore, the claim must be denied.

AWARD

Claim denied.

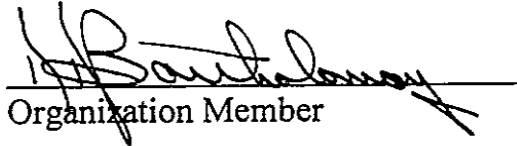


PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 4-19-95



Organization Member

DATED: 4-19-95