

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY
(former Chicago & North Western Transportation Co.)**

Case No. 239

Award No. 215

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Track Supervisor J. J. Mulvaney for his alleged responsibility in a grade crossing accident at Mile Post 83.2 on May 18, 1995 was arbitrary, capricious and on the basis of an unproven charge (Organization File 4WJ-7013D; Carrier File 950575).
2. As a consequence of the aforesaid violation, Claimant J. J. Mulvaney shall now be allowed to return to his track supervisor position with all rights unimpaired and he shall be compensated at his applicable rate for all time lost.

FINDINGS:

The Claimant was employed by the Carrier as a track supervisor patrolling track in a hi-rail vehicle in the Iowa Falls Subdivision.

On May 18, 1995, the Claimant was instructed to appear for a formal investigation to determine his responsibility, if any, for a collision between the Carrier high rail vehicle that he was operating and another vehicle which occurred at a grade crossing at MP 83.2 on the Iowa Falls Subdivision. After the investigation, the Claimant was notified that he had been found guilty as charged, and based on his record which included two previous accidents, he was dismissed from the Carrier's service.

The parties not being able to resolve the issue, this matter comes before this Board.

This Board has reviewed the procedural argument raised by the Organization and we find it to be with merit.

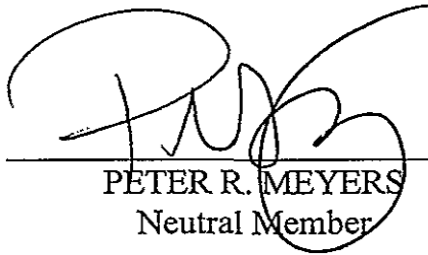
This Board has reviewed the record and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being responsible for the collision between the Carrier high rail vehicle that he was operating and another vehicle. The accident was clearly the Claimant's fault and he subjected himself to discipline.

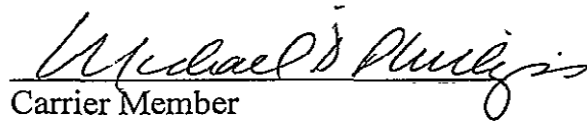
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

The Claimant's record reveals that he had been involved in a previous accident in 1990 and two accidents in 1993. In the 1993 accidents, he backed a Carrier truck into another vehicle and he caused over \$2,000 worth of damage to a Jordan Ditcher. In this case, the Claimant caused damage to two vehicles, as well as serious personal injuries. Given that previous background of the Claimant and the seriousness of this incident, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

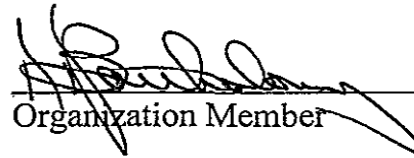
AWARD

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member

DATED: 3-10-98


Organization Member

DATED: 3-10-98