

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 34
Docket No. 40

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman E. E. Shaw was without just and sufficient cause, on the basis of an unproven charge and wholly disproportionate to such a charge. (Organization File 9D-4145; Carrier File 81-84-55-D).
- (2) Trackman E. E. Shaw shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Prior to the occurrence giving rise to the dispute herein, claimant, with about two years of service, was employed by the Carrier as a trackman and was working as such in a steel gang in suburban territory. On October 10, 1983, he was notified to appear for a formal investigation on the charge:

"To determine your responsibility in connection with the near miss with Train No. 650 on Friday, October 7, 1983."

The investigation was postponed and conducted on November 3, 1983. A transcript of the investigation has been made a part of the record. Following the investigation, claimant was dismissed from service by notice dated November 4, 1983. On September 25, 1984, claimant was reinstated without prejudice to his right to progress claim for pay for time lost.

Rule "M" of Carrier's General Regulation and Safety Rules, provides in part:

"Employee must exercise care to prevent injury to themselves or others.

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"Employee must expect the movement of trains, engines, or other equipment at any time, on any track, in either direction.

"Employees must not stand on the track in front of an approaching engine, car; or other moving equipment for the purpose of boarding the same."

There was substantial evidence in the investigation that at about 4:30 P.M., October 7, 1983, claimant was walking along track No. 3 and stepped between the rails of track No. 3 on which suburban train No. 650 was approaching at about fifty miles per hour. The engineer on train No. 650 felt that it was necessary to place his train in emergency to avoid hitting the claimant. Claimant managed to step into the clear, but only seconds before the train passed him. The train was not able to stop until after it had passed the point where claimant had been standing. There was evidence in the investigation that the train went by the spot where claimant was standing less than ten seconds after he had gotten in the clear.

There were some conflicts between claimant's statement and the statements of others in the investigation. However, it is well settled that a Board of this nature does not weigh the evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Also, conflicts in testimony does not warrant reversing the Carrier's determination.

It is clear from the record that claimant failed to exercise due caution to make sure there was no oncoming traffic before stepping on to the track. The engineer and fireman on train No. 650 indicated it was their opinion that it was necessary to place the train in emergency to stop prior to hitting the individual standing between the tracks.

Claimant's actions created a very dangerous situation. The time he was out of service did not constitute excessive discipline. The claim will be denied.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

J.D. Crawford
Carrier Member

H.L. Harger
Labor Member

Dated: April 16, 1985