

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 39
Docket No. 36

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 sixty (60) day suspension assessed Mechanic D. A. Miller for allegedly failing to wear a hard hat on October 20, 1983 and for allegedly failing to wear a hard hat and safety glasses on October 24, 1983 was without just and sufficient cause and in violation of the Agreement. (Organization File 2D-4209; Carrier File 81-84-68-D).
- (2) Mechanic D. A. Miller 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.

At the time of the occurrence giving rise to the dispute herein, claimant was employed as a mechanic in the Carrier's Engineering Department in Des Moines, Iowa. By notice dated October 24, 1983, claimant was instructed to appear for formal investigation, originally scheduled for 10:00 A.M., October 27, 1983, on the charge:

"Your responsibility in connection with your failure to wear hard hat while working on tie machinery at Bell Avenue Yard on Thursday, October 20, 1983 at approximately 3:00 P.M., and failure to wear hard hat and safety glasses on Monday, October 24, 1983 at approximately 1:50 P.M. at Bell Avenue Yard, working on tie machinery."

The investigation was postponed and conducted on November 15, 1983. Some procedural points were raised by the claimant and his representative at the beginning of the investigation on November 15, 1983. However, claimant admitted that he had had sufficient time in which to prepare a defense, and that he wished to go ahead with the investigation, or hearing, at the time. We consider, therefore, that any objection concerning the timeliness of the investigation was waived, and that the investigation was conducted in a fair and impartial manner.

There was substantial evidence presented in the investigation in support of the charge against claimant. Also, claimant's prior discipline record was far from satisfactory, having been disciplined on several occasions, including a prior thirty-day suspension for failing to wear a hard hat and safety glasses. Considering claimant's actions in the present case, together with his prior record, the discipline imposed in the present case was not arbitrary, capricious or in bad faith. The claim will be denied.

A W A R D

Claim denied.

Paul E. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. G. Hopper
Labor Member

Dated: Nov 29 1995