

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 41  
Docket No. 43

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 thirty (30) day actual suspension assessed Trackman Melvin Mayfield for his alleged responsibility in sustaining a personal injury was without just and sufficient cause and on the basis of an unproven charge. (Organization File 3D-4062; Carrier File 81-84-39-D).
- (2) Trackman Melvin Mayfield 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 employees and the carrier involved, are respectively employees and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Claimant, with seniority from May 22, 1979, was assigned as a trackman at Carrier's West Chicago Yard, on Carrier's Illinois Division. On September 2, 1983, while on his way to the work site at the starting time of his assignment, claimant contends that he was struck in the foot by a piece of rail which fell from its storage place as he walked by.

On September 7, 1983, claimant was instructed to attend a formal investigation on the charge:

"Your responsibility for your actions which resulted in personal injury to yourself along the material track at the West Chicago Yard on Friday, September 2, 1983."

The investigation was postponed and conducted on September 16, 1983. A copy of the transcript of the investigation has been made a part of the record. Following the investigation, claimant was assessed discipline of thirty days actual suspension, which activated a ten-day deferred suspension.

In the investigation it was developed that the rail storage pile involved consisted of a number of pieces of rail resting face down in a single layer upon some switch ties.

Evidence was presented indicating that claimant sustained an injury to his foot when he attempted to walk over the pile of rail enroute to his assignment. There was also evidence presented that a clear path to the work site was available some fifteen feet from the rail pile. Claimant's contention that he was simply walking beside the rail pile and a rail fell onto his foot lacks plausibility.

General Rule "M" of Carrier's General Regulations and Safety Rules provides:

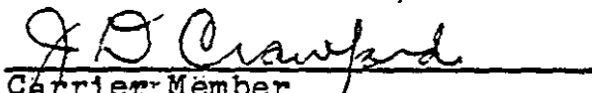
"Employees must exercise care to prevent injury to themselves or others.

Based upon the evidence before us, the Board does not find the discipline imposed to be arbitrary, capricious or in bad faith.

A W A R D

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Labor Member

Dated: May 29, 1935.