

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 42  
Docket No. 46

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 and disqualification of Foreman D. G. Weik for alleged 'responsibility for your failure to wear prescribed safety equipment and your failure to properly perform your duties as a foreman when employees under your supervision failed to wear prescribed safety equipment on August 30, 1983' was without just and sufficient cause, capricious, discriminatory and in violation of the Agreement. (Organization File 3D-4035; Carrier File 81-84-46-D).
- (2) Claimant D. G. Weik 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.

The record shows that claimant was employed as Foreman of the Girard, Illinois Section Crew on the Carrier's Illinois Division. On August 31, 1983, he was instructed to report for a formal hearing, scheduled for 9:00 A.M., September 9, 1983, on the charge:

"To determine your responsibility for your failure to wear prescribed safety equipment and your failure to properly perform your duties as a foreman when employees under your supervision failed to wear prescribed safety equipment on August 30, 1983."

The hearing, or investigation, was, by agreement, postponed and rescheduled for 9:00 A.M., September 15, 1983. A copy of the transcript of the hearing has been made a part of the record. From our review we find that none of claimant's substantive procedural rights was violated, and that the hearing was conducted in a fair and impartial manner.

Rule 33(A) of Carrier's timetable in effect at the time

of the occurrence herein, as read into the hearing or investigation, provides in part:

"Personnel in 'hard hat' areas, or performing 'hard hat' work, or assigned to 'hard hat' jobs, must wear hard hats while on duty."

In the hearing, or investigation, there was substantial evidence by the Roadmaster, the Assistant Roadmaster, and claimant's own statement, that during the afternoon of August 30, 1983, claimant and a member of his crew were performing 'hard hat' work in "hard hat" areas without hard hats. The charge against the claimant was sustained. On September 23, 1983, claimant was notified of discipline to be imposed:

"Sixty (60) days actual suspension and disqualification as a track foreman. Suspension to begin on September 26, 1983."

We find that severe discipline was warranted. No employee may decide for himself the rules that he will comply with or when he will be in compliance. The sixty days actual suspension was warranted, but disqualification as a track foreman was excessive. We will award that claimant be restored to his former seniority as a track foreman, with the right to bid on vacancies in accordance with his foreman seniority. We will deny any claim for compensation in behalf of claimant.

#### A W A R D

Claim sustained to the extent indicated in Findings.

#### ORDER

The Carrier is directed to comply with this Award within thirty days from the date hereof.

Paul C. Carter  
Chairman, Neutral Member

J. B. Crawford  
Carrier Member

H. G. Harper  
Labor Member

Dated: May 29, 1985.