

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 50
Docket No. 58

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 suspension assessed Machine Operator S. A. Walter for failure to wear his hard hat was without just and sufficient cause, capricious, excessive and in violation of the Agreement. (Organization File 8D-4256; Carrier File 81-84-22-D).
- (2) Claimant S. A. Walter shall have his record cleared with all other rights unimpaired and shall be compensated for all wage loss suffered."

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.

Claimant, with about nine years of service with the Carrier at the time of the occurrence giving rise to the dispute herein, was employed as a machine operator at Adams, Wisconsin. At about 1:00 P.M., November 1, 1983, claimant was observed by the Trainmaster driving spikes and not wearing a hard hat as required by Carrier's safety rules. He was again observed about 2:15 P.M. by the Trainmaster working without a hard hat. On November 3, 1983, claimant was directed to ~~attend~~ a formal investigation scheduled for 11:00 A.M., November 10, 1983, on the charge:

"To determine your responsibility for failure to comply with the General Regulations and Safety Rules when you were observed not wearing your hard hat on November 1, 1983 in Adams Yard."

The investigation was postponed and conducted on November 15, 1983. A transcript of the investigation has been made a part of the record. Following the investigation claimant was assessed discipline of thirty days suspension.

At the investigation, claimant's representative objected to the charge, contending that "To determine your responsibility" indicated prejudgment. We see no basis for such contention. The charge was to place claimant on notice that the purpose of the

investigation was to determine whether or not he violated the safety rules. The Carrier points out that the language used in the charge has been standard on the Carrier's property for decades. Our experience on this Board seems to bear out the Carrier's position, as in numerous prior cases the identical language has been used in notices of charge. We reject the contention of the Organization in this respect.

In the investigation substantial evidence was presented that claimant was driving spikes without having his hard hat on. Claimant admitted working on a job requiring him to wear a hard hat, but he was not wearing it. There can be no serious question that claimant was in violation of the Safety Rules. Claimant's past record, introduced into the investigation, shows that he had two prior safety reminders.

The contention was made in the investigation and in the Organization's submission, that entering an employee's past record into an investigation transcript precludes a fair and impartial investigation. Some few awards of the National Railroad Adjustment Board have so held; however, in many awards in which this referee has participated, we have consistently held that the inclusion of an employee's past record in the transcript did not preclude a fair and impartial hearing. We adhere to that principle here. The past record may only properly be used in determining the discipline to be imposed for a proven offense; but may not be used to prove the offense with which charged.

The Organization also contends that the assessment of thirty days actual suspension represents excessive and undue punishment. We cannot accept such contention, considering claimant's prior record. See Awards Nos. 39 and 42 of this Board concerning safety equipment, particularly hard hats.

A W A R D

Claim denied.

Billy Elmer
Carrier Member

Paul H. Carter
Chairman, Neutral Member

H. G. Harper
Labor Member

DATED: Oct 3, 1985.