SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 51
Docket No. 59

PARTIES: Brotherhood of Maintenance of Way Employes
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 deferred suspension and disqualification of Machine Operator R. Garza for allegedly neglecting the maintenance of a tamper was without just and sufficient cause and on the basis of an unproven charge. (Organization File 3D-4040; Carrier File 81-84-35-D).

(2) R. Garza 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 employes and the Carrier involved, are respectively employes and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Claimant, with approximately thirteen years of service for the Carrier and Machine Operator seniority dating from May 13, 1979, was employed astamper operator in a rail gang in the Sterling, Illinois area when the incident giving rise to the dispute herein occurred.

On August 24, 1983, claimant was assigned to operate Tamper No. 17-2199. After operating the tamper about six hours it overheated. The radiator was checked and found to be low on water, which was replaced. The tamper ran about forty-five minutes before overheating again. Upon further examination, water was found in the oil.

On August 26, 1983, claimant was directed to attend an investigation scheduled for September 1, 1983, on the charge:

> "Your responsibility in neglecting the maintenance of Tamper No. 17-2199 which resulted in damage to the tamper on August 24, 1983 at Nelson, Illinois."

The investigation was postponed and conducted on September 8, 1983. At the beginning of the investigation, claimant's representative objected that the charge indicated prejudgment. We see no proper basis for such objection. In this connection, see our Award No. 50, Docket No. 58.

Following the investigation, claimant was assessed discipline of thirty days deferred suspension and disqualification as a machine operator.

In the appeal on the property and in submission to this Board other procedural contentions have been raised by the Organization: (1) that the hearing officer did not render the decision, and (2) that the deciding officer was the first appeals officer. In our Award No. 49, Docket No. 57, we passed upon similar contentions and cited other prior awards of this Board. We will reject the contentions herein.

There was substantial evidence in the investigation that claimant was negligent in the maintenance of the tamper, such as keeping a check on fluid levels in the machine. Discipline was warranted. We will not disturb the thirty days deferred suspension. However, considering claimant's apparently satisfactory service record over the years, we consider disqualification as a machine operator as excessive. We will award that claimant be restored to his former seniority as a machine operator, with the right to exercise that seniority by bidding on vacancies. We will deny any claim for compensation on 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

Carrier Member

H. G. Harper
Labor Member

DATED: Oct 3, 1985.