

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 54
Docket No. 63

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 Brotherhoods that:

- (1) The dismissal of J. G. Leonard for his alleged responsibility in an injury sustained by him was without just and sufficient cause, capricious and based on an unproven charge. (Organization File 3D-4537; Carrier File 81-84-180-D).
- (2) Claimant J. C. Leonard 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 by the Carrier as an assistant foreman in the Track Department at Madison, Illinois. He had been in service about seven years. During the course of his assignment on March 30, 1984, claimant was working with trackman Calcari in the process of repairing track. While claimant was raising ("nipping") a tie, trackman Calcari was striking the tie plate with a spike maul. After swinging several times at the tie plate, on the final swing the maul glanced off the top of the tie plate and struck claimant's right knee.

Claimant and trackman Calcari were, on April 2, 1984, directed to appear for formal hearing scheduled for April 6, 1984, on the charge:

"To determine your responsibility in connection with personal injury sustained by Assistant Foreman J. C. Leonard on March 30, 1984 at Madison, Illinois."

The hearing was postponed and conducted on April 19, 1984. A copy of the transcript of the hearing has been made a part of the record. On April 23, 1984, claimant was notified of his dismissal from service. The Carrier advises that on December 19, 1984, claimant was advised that he was being reinstated to service without prejudice to his claim for pay for time lost. Claimant was out of service about eight months.

We have carefully reviewed the transcript of the hearing conducted on April 19, 1984, and find that substantial evidence

was adduced that claimant was in violation of the Safety Rules in the manner in which the work was performed on March 30, 1984. He admittedly placed himself in a "pretty vulnerable position." There is evidence that he was straddling the pinch bar, and was standing in a position where it was possible for him to be struck by the maul.

Also, claimant's prior record with respect to discipline and personal injuries was far from satisfactory. We do not find the discipline imposed to be arbitrary, capricious or in bad faith.

A W A R D

Claim denied.

Barry E. Simon
Carrier Member

Paul C. Carter
Chairman, Neutral Member

H. B. Harper
Labor Member

DATED: Oct 3, 1985.