

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 55  
Docket No. 64

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 and permanent disqualification as a machine operator assessed S. B. Blum for alleged failure to properly protect Tamper #1 Track at Onawa, Iowa was without just and sufficient cause and unwarranted. (Organization File 4D-4691; Carrier File 81-84-224-D).
- (2) Claimant S. B. Blum shall be allowed the remedy prescribed in Rule 19(a)."

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.

On June 22, 1984, claimant was assigned as a machine operator on Carrier's Iowa Division, assigned to a tamper in the vicinity of Onawa, Iowa. On the date claimant's machine was mechanically inoperable and claimant and the machine remained on No. 1 track at Onawa. The remainder of the gang, with the remaining machines, left the siding.

According to the Carrier, about 4:10 P.M. on the date involved, the Roadmaster was hrrailing in the vicinity of Onawa and saw that the tamper was parked on the side track. The Roadmaster noticed that neither switch leading to the track on which the tamper was parked had been spiked, and that the south switch was lined to the track on which the machine was parked; claimant was not present, and red flags were not posted at either end of the machine.

On June 29, 1984, claimant was instructed to appear for a hearing scheduled for July 3, 1984, on the charge:

"Your responsibility in connection with your failure to properly protect your machine System No. 17-3189 (Jr. Tamper) on #1 track at Onawa, at approximately 4:10 P.M. on June 22, 1984."

The hearing was postponed and conducted on July 9, 1984. A copy of the transcript of the hearing has been made a part of the record. The witnesses at the hearing were the Roadmaster and the claimant. The Roadmaster testified as to the situation he observed at about 4:10 P.M., on June 22, 1984, as stated by the Carrier in its submission. He went on to testify:

- "Q. What's the proper way to flag a machine when it's left unattended?  
A. You spike any switch that leads into that track and let the dispatcher know that the track is out of service. Otherwise, if they use that track for setouts the dispatcher won't let you take that track out of service, you just put up a red board 800 feet in advance of the machine and let the dispatcher know."

Claimant testified that he had been a machine operator for about ten years. He admitted that the machine was left unprotected, and indicated that he was not aware of the proper procedures for protecting the equipment.

Carrier's Rules 1011, 1015 and 1041 of Rules of the Engineering Department, were read into the hearing. They provide:

- 1011: "Employee in charge of work equipment will be personally responsible for the safe operation of the equipment."  
1015: "Information received concerning movement of train does not relieve the employee in charge from the responsibility of protecting work equipment against trains, hy-rail vehicles and other work equipment."  
1041: "Work equipment must not be left unattended on track. It must be removed from the track or protected by flag when not in use."

The claimant testified in the hearing that the foreman gave him no instructions as to securing the switches and providing flag protection for the machine; that he assumed that the foreman had taken care of the protection. No employee should act under assumptions in a matter of this kind. If the claimant did not know what protection had been provided, then he should have taken action to find out. It is incredible that an employee with ten years of experience as a machine operator would not know the requirements for protecting such equipment.

There was substantial evidence in the hearing to warrant the discipline imposed, and the Board will not interfere.

A W A R D

Claim denied.

Bruce Jimm  
Carrier Member

Paul A. Carter  
Chairman, Neutral Member

W. G. Harper  
Labor Member

DATED: Oct 3, 1985.