

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 60
Docket No. 68

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 ten (10) day suspension assessed B&B Foreman L.D. Fisher for allegedly failing to properly perform his duties was without just and sufficient cause, on the basis of an unproven charge and in violation of the Agreement. [Organization File 4D-4542; Carrier File 81-84-197-D].
- (2) Claimant L.D. Fisher shall be allowed the remedy described 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.

On March 28, 1984, Claimant, a B&B foreman, was working with his crew and a second B&B foreman and crew in unloading screenings from an eighteen-car train. At approximately 3:15, the last three cars of the train derailed. Claimant was notified to report for investigation, to be conducted on April 13, 1984, of the charge:

"Your responsibility for failure to properly perform your duties which resulted in a derailment on the South end of Bridge R-311.41 on March 28, 1984, at approximately 3:15 p.m. near Eddyville, Iowa."

The investigation was conducted as scheduled on April 13, 1984. A copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

The Organization contends that the Claimant was denied a full and fair hearing on the charge because the Carrier failed to have all the witnesses with relevant information available at the hearing. The Organization further asserts that the Carrier failed to meet its burden of proof.

The Carrier contends that the charges against the Claimant were proven and the discipline assessed warranted. The Claimant admittedly was directing the train's movement, but could not see the front of the train; as a result, the train was moved

to a point where it was unsafe to work. Had Claimant taken the proper precautions, the derailment could have been avoided. Based on Claimant's previous record, the 10-day suspension was neither arbitrary nor unreasonable.

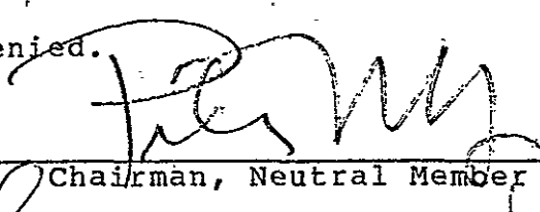
This Board has reviewed all of the testimony and other evidence in this case, and it finds that the Claimant was afforded a full and fair hearing on the charge. Moreover, this Board finds that the Claimant was properly found responsible for failing to take the proper precautions required under the circumstances.

The Claimant, the B&B foreman working with the bridge crew and work train at the time in question, had the responsibility of directing the movement of the train and should not have given any direction to the engineer if he could not see the front of the train. However, he did, and the train was shoved far beyond the point where it was safe to work, which eventually led to the derailment of three cars. Hence, there is sufficient evidence in the record to justify the Carrier's taking disciplinary action against the Claimant; i.e., the Carrier has met its burden of proof.

Once this Board has determined that a carrier has a sufficient basis to discipline a claimant, this Board then turns its attention to the amount of discipline imposed by a carrier. Normally, this Board will not second-guess a carrier in the imposition of discipline. In this case, the Claimant received a 10-day suspension for failing to properly perform his duties, resulting in the derailment of three cars. A review of the Claimant's record shows a previous discipline of a 30-day deferred suspension in 1983 for a similar infraction. Hence, this Board finds that the Carrier has abided by a progressive disciplinary system, and the Board does not find that the discipline taken against the Claimant in this case was unreasonable, arbitrary, or capricious.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

Date: April 9, 1986