

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 69
Docket No. 73

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 five (5) day suspension assessed Boom Truck Operator B.R. Gott for his personal injury and damage to Torsion Beam Tamper was without just and sufficient cause and on the basis of an unproven charge. (Organization File C&NW-D-1057; Carrier File 81-83-38-D)
- (2) Claimant B.R. Gott 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.

On October 15, 1982, Claimant was instructed to travel a Torsion Beam Tamper from Millerton to Carlisle, Iowa. The safety latch on the machine's turntable was missing. Claimant asked the mechanic whether the machine could travel without the latch; the mechanic answered that it could if the lever was in the "up" position. At Melcher, Iowa, the turntable came down and struck a crossing, causing damage to the machine. Claimant also sustained a personal injury as a result of the incident.

Claimant subsequently was directed to appear at a formal hearing on the charge:

Your responsibility in connection with your personal injury and damages to Torsion Beam Tamper, System 17-2182 on October 15, 1982 near Melcher, Iowa.

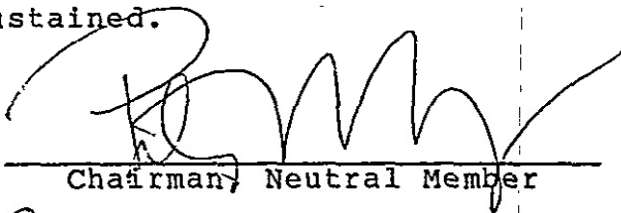
The investigation was conducted as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner. Rule 19(d), cited in the claim, specifies:

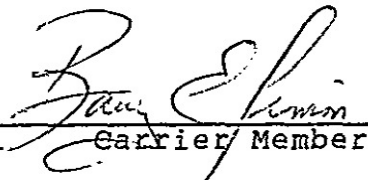
If the charge against the employee is not sustained it shall be stricken from the record. If the employee has been removed from position held, reinstatement will be made with all rights unimpaired and payment allowed for the assigned working hours actually lost while out of service of the Company, at not less than the rate of pay of position formerly held, less earnings in outside employment, or for the difference in rate of pay earned, if in the service. An employee who has earnings from outside employment may deduct from those earnings actual necessary expenses in securing and performing work.

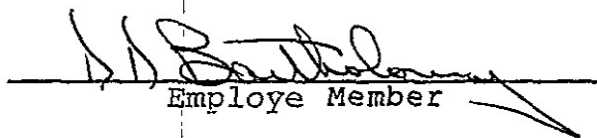
This Board has reviewed the testimony and evidence in this case, and we find that there is not sufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of knowingly violating the rule against operating machines without safety devices properly in place. There is no probative evidence that the Claimant's actions were unsafe, violated any Carrier rule, or were contrary to the instructions of the Claimant's immediate supervisor. Hence, the claim must be sustained.

AWARD:

Claim sustained.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: Sept 23, 1956