

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 70
Docket No. 79

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 forty five (45) days suspension assessed Machine Operator R.J. Weatherman was without just and sufficient cause and excessive. (Organization File 4D-4602; Carrier File 81-84-230-D)
- (2) Machine Operator R.J. Weatherman shall have his record cleared of this incident and shall be compensated for all wage loss suffered."

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 June 1, 1984, Claimant was using the magnet of a Little Giant Crane to spread out piles of tie plates. As Claimant worked, the crane's boom struck overhead power lines. Claimant subsequently was directed to appear at a formal investigation of the charge:

Your responsibility in connection with your failure to perform your duties when operating Little Giant Crane, System Machine Number 17-3310 struck power lines at MP 27.25 at approximately 9:30 A.M. on June 1, 1984.

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

Carrier's Engineering Rule 1011 provides that the "Employee in charge of work equipment will be personally responsible for the

safe operation of the equipment." Paragraph three of Rule 1048 states that "[a] careful lookout must be maintained to avoid contact with overhead wires and other overhead obstructions."

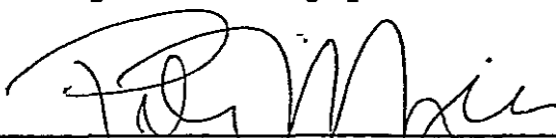
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of violating the rule requiring that a careful lookout be maintained in order to avoid contact with overhead wires and other overhead objects. Moreover, the record is clear that the Claimant had been warned that overhead wires were present in the work area and that the Claimant failed to see them prior to contacting them with his machinery. He clearly admitted that he was not fully concentrating on his machine's magnet. Hence, he was properly found guilty.

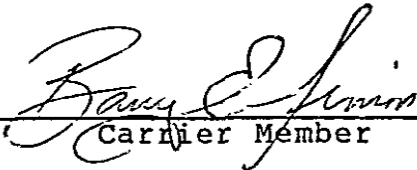
Once this Board has held that a Carrier was justified in finding a Claimant guilty, we must next turn our attention to the type of discipline imposed. This Board will normally not set aside discipline unless the Carrier's action was unreasonable, arbitrary, or capricious. In this case, it is clear that the normal discipline imposed by the Carrier for infractions of this kind is a 30-day suspension. See Awards 93 and 59 of Public Law Board 2960 and Award 16 of this Board. The Claimant's work record does not include any justification for deviating from that past practice. Hence, the 45-day suspension was unreasonable, and it shall be reduced to a 30-day suspension. The Claimant shall also receive back pay for the difference in time.

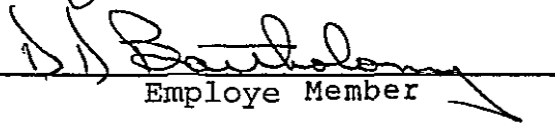
AWARD:

Claim sustained in part. The 45-day suspension is

hereby reduced to a 30-day suspension, and the Claimant is to be made whole for the 15 days of lost pay and benefits.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: Sept 23, 1986