

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 72
Docket No. 81

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 discipline of disqualification as foreman assessed Foreman R.F. Garner for alleged failure to perform your duties in a safe manner was without just and sufficient cause and excessive. [Organization File 9D-4873; Carrier File 81-84-240-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 August 29, 1984, Claimant was working as foreman on an abandonment gang. While using a track chisel, the assistant foreman sustained a personal injury when part of the chisel broke and lodged in his leg. Claimant subsequently was directed to appear at a formal investigation of the charge:

To determine your responsibility in connection with your failure to perform your duties in a safe manner, resulting in a personal injury to Assistant Foreman Roger Belle, while employed on Abandonment Gang at approximately 11:00 A.M. on Wednesday, August 29, 1984.

The investigation was held 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.

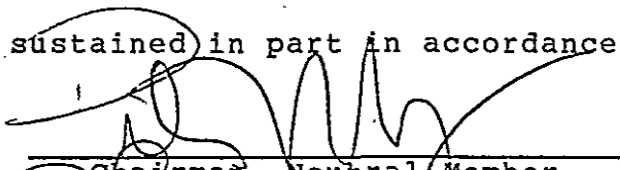
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the


record to support the Carrier's finding that the Claimant was guilty of failure to perform his duties in a safe manner. The record is clear that on the day before the incident, the Claimant was warned not to use the track chisel because it was unsafe. The Claimant disregarded the order, used it, and it led to a personal injury to an assistant foreman.

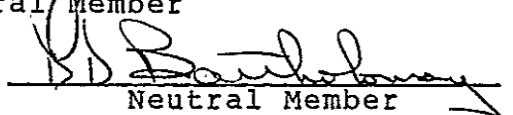
Once this Board determines that a Claimant was properly found guilty of the offense with which he was charged, we next turn our attention to the type of discipline imposed. In this case, because of the one incident, the Claimant was disqualified from his position as a foreman. This Board will normally not second-guess a Carrier in the imposition of discipline unless we find that the Carrier's action was unreasonable, arbitrary, or capricious. Although the infraction was serious, this Board finds that disqualifying the Claimant from his position of foreman was excessive under the circumstances and, therefore, arbitrary and unreasonable, and we must set it aside. The Claimant had held that position of foreman for nearly one year with only one minor reprimand. Therefore, the discipline is hereby reduced to a written warning, and the disqualification of the Claimant from his former position is set aside.

AWARD:

Claim sustained in part in accordance with the above award.


Chairman, Neutral Member


Carrier Member


Neutral Member

Date: October 6, 1986