

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 75  
Docket No. 84

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 assessed Machine Operator T.E. Kelley for his alleged failure to properly operate Kershaw Ballast Regulator on August 6, 1984, was without just and sufficient cause, punitive and excessive.  
[Organization File 4D-4788; Carrier File 81-85-8-D]
- (2) Machine Operator T.E. Kelley 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 August 6, 1984, Claimant was assigned to operate a Kershaw Ballast Regulator near Bell Plaine, Iowa. At about 4:00 p.m., the ballast regulator's wing hit a bridge. The incident caused personal injury to the track foreman and damage to the machine. Claimant subsequently was directed to appear at a formal investigation of the charge:

Your responsibility in connection with your failure to properly operate Kershaw Ballast Regulator, System Machine Number 17-3023 on August 6, 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.

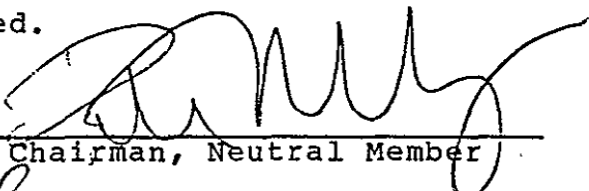
This Board has reviewed all of the evidence and


testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to properly operate the Kershaw Ballast Regulator on August 6, 1984. The record is clear that the accident was caused solely by the Claimant's failure to secure the wing prior to moving the machine. In fact, the Claimant admitted his responsibility for the incident.

Once this Board determines that a Claimant has been properly found guilty of the offense with which he was charged, we next turn our attention to the type of discipline imposed. This Board will not set aside discipline unless it is unreasonable, arbitrary, or capricious. In this case, the Claimant received a 30-day suspension. Although the Claimant had a decent record prior to the incident, there has not been a showing that the Carrier was unreasonable, arbitrary, or capricious in its imposition of the discipline. Hence, the claim must be denied.

AWARD:

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Neutral Member

Date: October 6, 1986