

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 82
Docket No. 90

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 deferred suspension and one (1) year disqualification as a Machine Operator assessed E.L. Teatsworth was without just and sufficient cause and on the basis of an unproven charge. [Organization File 2D-4997; Carrier File 81-85-56-D]
- (2) Claimant E.L. Teatsworth 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 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 October 8, 1984, while Claimant was moving rails with a boom truck, a rail fell from the truck's bucket to the ground. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility in connection with your unsafe operation of System Boom Truck #21-3074 at Beech, Iowa on October 8th, 1984.

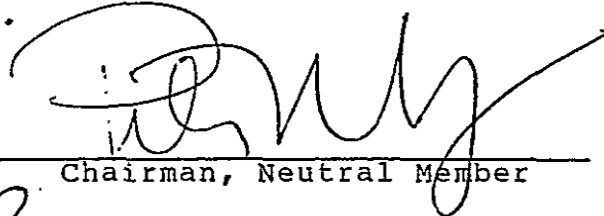
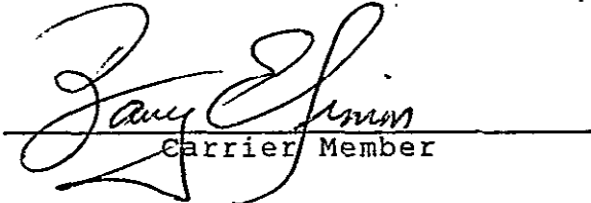
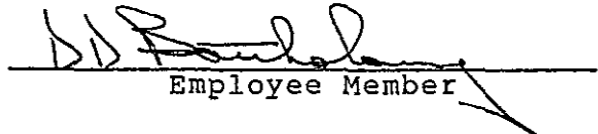
The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

This Board has reviewed all of the evidence and testimony in this case, and we find that there is insufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of the charges against him. It is clear that the burden is on the Carrier to

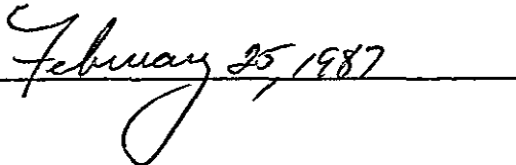
prove, by direct relevant evidence, that the Claimant was in violation of some rule or order in order to justify taking disciplinary action against him. In this case, although an accident did occur, there is no evidence to show that the Claimant acted improperly in any way or violated any safety rule. Although many accidents are caused by wrongdoing, the fact that an accident occurred does not necessarily mean that there was some wrongdoing. Therefore, the Carrier had no justification for finding the Claimant guilty of the charges.

Award:

Claim sustained.


Chairman, Neutral Member
Carrier Member
Employee Member

Date:


February 25, 1987