

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 84
Docket No. 88

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 sixty (60) day suspension assessed Trackman V.M. Rodriguez was without just and sufficient cause and in violation of the Agreement. [Organization File 3D-4878; Carrier File 81-85-46-D]
- (2) Claimant Rodriguez 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 September 7, 1984, Claimant was observed working without wearing his hard hat. Claimant subsequently was directed to attend a formal investigation of the charge:

To determine your responsibility in connection with your failure to wear a hard hat, while you were working with the gang at East Clinton, Illinois on September 7, 1984.

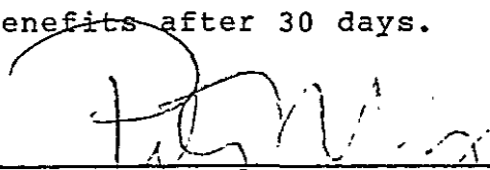
The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.


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 the safety rule violation for failure to wear his hard hat on the date in question. The Claimant was well aware of the rule and was admittedly not wearing his hard hat when he was viewed by his supervisors.

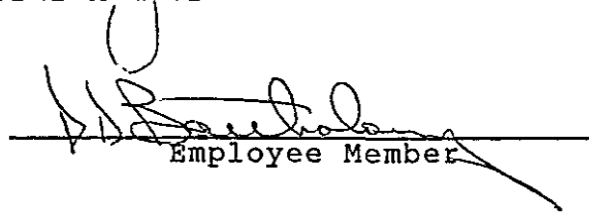
The Organization contends that the 60-day suspension given the Claimant was excessive for this violation. This Board agrees. Although there have been several other disciplines that the Claimant has received over the course of his employment, none of them related to a safety violation. Moreover, although the Claimant stated that he was aware of the rule, he pointed out at the hearing that the chin strap on his hard hat was broken; and he had a hard time keeping his hat on that day because it was very windy. Taking all of the circumstances into consideration, we find that it was unreasonable, arbitrary, and capricious for the Carrier to issue a 60-day suspension for this violation. This Board finds that a 30-day suspension would have been reasonable and hereby orders that the discipline be reduced to a 30-day suspension and that the Claimant be reimbursed for all back pay and other lost benefits after 30 days.

Award:

Claim sustained in part. The discipline is hereby reduced to a 30-day suspension, and the Carrier is to make the Claimant whole for all lost pay and other benefits after 30 days.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: March 5, 1987