

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 85
Docket No. 95

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 fifteen (15) day suspension assessed Trackman M.J. Turnbull for allegedly acting in an unsafe manner or failing to perform his duties as instructed was without just and sufficient cause and on the basis of an unproven charge. [Organization File 2D-4642; Carrier File 81-84-198-D]
- (2) Claimant Turnbull is entitled to the remedies 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 June 24, 1984, while Claimant was switching out two ballast cars, one of the cars began to roll and then collided with a Burro crane, resulting in damage to both pieces of equipment and injury to five employees. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility in connection with collision between CNW 791007 Ballast Car and Burro 50 Crane #17-3915 and cars he was handling on June 20, 1984 at approximately MP 100.25 on the Iowa Falls Subdivision and injuries incurred as a result of this collision.

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 in the record, and we find that there is sufficient evidence to support the Carrier's

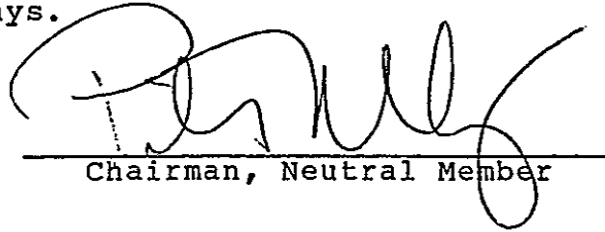
finding that the Claimant failed to take the required precautions to ensure that the ballast car was properly secured to prevent it from rolling downhill. The Claimant did not block the wheels even though the car was on a .6 percent grade; and when the handbrake did not hold the car, the accident occurred. The Claimant had the responsibility of preventing a runaway car, and he failed to adequately perform that duty.

Once this Board finds that there is sufficient evidence in the record to support a guilty finding, we next turn our attention to the nature of the discipline imposed on a claimant. The record is clear that after the car began rolling, the Claimant attempted to reset the handbrakes, and they apparently failed. There is some evidence in the record that the brakes were not operating properly, which contributed toward the accident. Claimant certainly cannot be charged with the failure of the handbrakes to operate properly; however, had Claimant taken the additional precautions, the accident would not have occurred. Consequently, this Board, after reviewing all of the evidence, finds that the penalty imposed by the Carrier against the Grievant was excessive under the circumstances. We hereby find that the 15-day suspension be reduced to a 5-day suspension and that Claimant be made whole for all wages and benefits after 5 days.

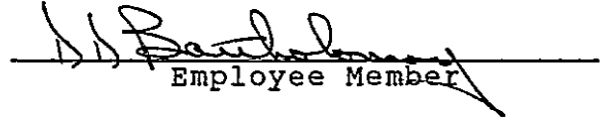
Award:

Claim sustained in part. The discipline is reduced to a 5-day suspension, and Claimant is to be made whole for all lost wages and

benefits after 5 days.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: April 3, 1987