

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 92
Docket No. 102

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 Speedswing Operator R.T. Hoffman for his alleged responsibility for an incident when the Speedswing was sideswiped by Switch Job-03 is unwarranted, unjust and based on an unproven charge. [Organization File 4D-5082; Carrier File 81-85-99-D]
- (2) Claimant R.T. Hoffman is entitled to the remedy prescribed in Rule 19(d) of the effective Agreement."

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 25, 1984, Claimant drove the Speedswing between a fuel truck and Switch Job-03. The Switch Job then began to pull cars from the track, and two of the cars struck the Speedswing. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility in connection with incident when speed swing, System No. 17-3336 was sideswiped by Switch Job-03 making a pull of cars at No. 14-Mill Track, Transfer Yard, approximately one half mile North of Yard Office at Cedar Rapids, Iowa, at approximately 8:25 A.M., October 25, 1984 resulting in damage to 2 railroad cars and Speed Swing.

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.

The Organization asserts that Carrier failed to meet its burden

of proof. The Organization argues that the Switch Job was stationary when Claimant approached, and there was no indication that it was about to move. Because he realized there was insufficient clearance, Claimant was going to back up and use a different route; the incident occurred before Claimant could back up. The Organization asserts that Carrier has not shown that Claimant was negligent; the equipment was operated safely. The Organization contends that when discipline is excessive, arbitrary, capricious, or unwarranted, the discipline cannot stand. The Organization therefore argues that the claim should be sustained.

The Carrier contends that the charge against Claimant was proven, and the assessed discipline was warranted. The record shows that Claimant placed his vehicle in a position without adequate clearance. Moreover, a basic rule in railroading is that employees must expect movement of cars on any track in any direction at any time. Carrier argues that Claimant should have anticipated the movement of cars, and he should not have been in a situation without adequate clearance. Carrier therefore asserts that the assessed discipline is neither arbitrary nor capricious, and the claim should be denied in its entirety.

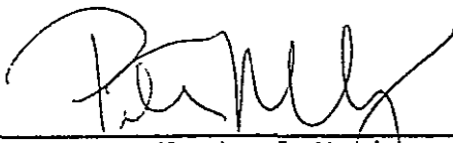
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. The Claimant was responsible for placing his vehicle in a position where it would not be involved in an accident. He observed the position of the other cars and, yet, left his vehicle in a place where it could be sideswiped. He was the only person responsible for his vehicle, and he was obviously the one responsible for the

accident.

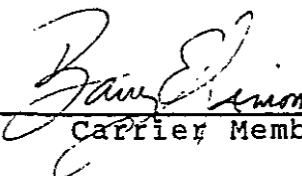
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, we find nothing unreasonable about the discipline imposed on the Claimant. Hence, the claim will be denied.

Award:

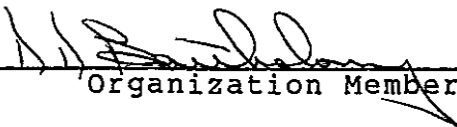
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: October 22, 1987