

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 93
Docket No. 103

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 and disqualification as a Foreman, Assistant Foreman or Track Inspector assessed Foreman T.H. Halvorson for his alleged responsibility for failure to perform duties was without merit, prejudicial, capricious and in violation of the Agreement. [Organization File 2LF-2048; Carrier's File 81-85-150-D]
- (2) Claimant T.H. Halvorson 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 March 21, 1985, a Carrier Special Agent observed an employee working with Claimant while not wearing a hard hat; the Special Agent also observed employees sitting in Claimant's truck. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for failure to properly perform your duties on Thursday, March 21, 1985 while assigned as Foreman-Job #001 on the Belmond Section, specifically:

- (a) When at various times employees under your supervision were performing their duties without proper safety hats and safety glasses on in your presence.
- (b) And your failure to submit an accurate Daily Work Report describing work performed, including when you were observed departing Belmond at 7:53 AM and also when you and your crew were observed sitting in Company truck at Thornton, Iowa from 8:36 AM to 9:10 AM.

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 contends that it is undisputed that the employee working without a hard hat was under the Roadmaster's supervision, not that of the Claimant; Claimant was not responsible for making out the Roadmaster's reports. The Organization argues that any discipline in connection with the above incident is not warranted. The Organization further argues that there is no merit to the charge that Claimant made out an inaccurate Daily Work Report. Claimant stated that the report was a generalization of the day's activities, and that he completed it from memory. Moreover, when Claimant was observed sitting in the truck, Claimant was waiting for a burro crane to warm up and was discussing that day's duties. The Organization asserts that all the work described in the report was completed, although the time notations may be incorrect.

The Organization also contends that even if Claimant filed an inaccurate report unintentionally, the assessed discipline is excessive. Moreover, any allegations not included in the initial notice of investigation cannot be used as a basis for assessing discipline. The Organization asserts that if discipline is excessive, arbitrary, capricious, or unwarranted, it cannot stand. The Organization therefore contends that the claim should be sustained.

The Carrier argues that the charge against Claimant was proven, and the assessed discipline was warranted. The transcript shows that there were periods of time on the day in question when Claimant and his crew performed no productive service. Carrier further contends that Claimant is not relieved of his responsibility to enforce safety

rules by his testimony that the employee working without a hard hat was not under Claimant's supervision. Carrier argues that Claimant condoned this safety violation by not correcting the employee. Carrier asserts that the Organization is not correct in asserting that Claimant had no authority to require the employee to comply with the safety rules. Carrier points out that Claimant attempted to correct the same employee for another violation. Carrier asserts that the assessed discipline was neither arbitrary nor unreasonable, 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 hearing officer's finding that the Claimant was guilty of the offenses with which he was charged. This Board agrees with the Carrier's position that the Claimant had a responsibility of correcting employees who were violating safety rules. Moreover, the Claimant, in his position, has a responsibility of submitting properly documented work reports. In this case, he failed to comply with his responsibilities, and he was properly found guilty.

Once this Board has determined that a claimant was properly found guilty of the charges against him, we next turn our attention to the type of discipline imposed. In this case, based upon the wrongdoing of the Claimant, as well as his service record, we find that there is nothing unreasonable, arbitrary, or capricious about the assessment of a 30-day suspension and disqualification of the Claimant as foreman in response to the wrongdoing. The record reveals that in 1983, the Claimant was suspended for 30 days and disqualified as foreman for other failures in job performance.

Award:

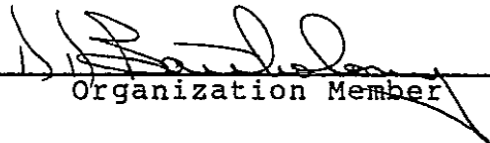
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: October 22, 1987