

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement the Burlington Northern Railroad company arbitrarily suspended Electrician John A. Sherwood from its service for a period of five days following an investigation which failed to substantiate the allegations which had been made against him. It was neither fair nor impartial.

2. Accordingly, the Burlington Northern Railroad Company should be instructed to compensate Electrician Sherwood for the five (5) days of wages lost during his suspension in addition to compensating him or otherwise making him whole for all other losses he may have suffered such as but not limited to, vacation or vacation pay, holidays or holiday pay, insurances, overtime and any other right, benefit or privilege to which he is entitled but of which he may have been deprived.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed as an Electrician at the Northtown Diesel Shop. On April 29, 1988, Claimant was a member of a "hook-up" crew which also included a Machinist and a Sheet Metal Worker. The crew's hours were 7:00 A.M. to 3:00 P.M. The crew's responsibility was to make necessary hook-ups and tests between locomotives which were being put together so as to complete a "consist" of engines to pull a train.

At 2:43 P.M. on April 29 a hostler notified the Foreman that the power for Train 107 was ready for hook-up. At 2:45 P.M. the hook-up crew entered the pit office and were asked by the Foreman if they had hooked up the power for Train 107. One of the crew members said they had not as the consist was not in the hook-up area. The Foreman told the crew the consist was in the hook-up area and that he wanted it hooked up before they left for the day. At this time the Foreman finished his paper work. Shortly thereafter, at 2:48 P.M., while leaving the building the Foreman spotted the Machinist and the Sheet Metal Worker walking toward the diesel shop and not out toward the storage area where they had been instructed to go. The Foreman caught up with the Machinist and the Sheet Metal Worker and told them to report to the Assistant General Foreman's office in order to determine why they were not complying with his instructions to hook up the power for Train 107. Upon reaching the office, the Foreman had the Claimant paged over the loud speaker system. Claimant entered the office in less than a minute. The Foreman then informed the Assistant General Foreman that the crew had failed to comply with his instructions. Following this statement the Claimant and the Machinist left the office and proceeded to the hook-up area where they performed the necessary hook-up work on Train 107. The Sheet Metal Worker did not go to the hook-up area and did not assist in the hook-up work.

In a notice dated May 5, 1988, the Claimant was notified to attend an Investigation:

"for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged insubordinate behavior and failure to comply with instructions from proper authority resulting in delays to BN trains 107 and 838 at approximately 2:45 p.m. on Friday, April 29, 1988."

Following the Investigation Claimant was found guilty of the charges and suspended for five days.

From our review of the Investigation we find it was conducted in a fair and impartial manner with respect to the Claimant.

The Employees main argument in this case is that the Claimant was not guilty of the charges.

We have thoroughly sifted through the voluminous testimony (235 pages) in this case and cannot find any conclusive evidence that would indicate that the Claimant was guilty of insubordination or that he was in any way responsible for any delay to Train 107 or Train 838.

In connection with the charge of alleged insubordination we find basically that:

1. Nobody testified as to any outright refusal by the Claimant to hook-up Train 107.
2. Claimant was not seen heading for the diesel shop by Foreman Rogstad as was the other two members of the hook-up crew. The hook-up area is in the Storage area.
3. There was no evidence introduced indicating that Claimant was intending to leave the property as were the other two members of the crew. Claimant remained close by in the area as indicated in Foreman Rogstad's testimony that he appeared in the Assistant General Foreman's Office in less than a minute after being paged.

The Claimant had in excess of 30 years service on April 29, 1988, and had no prior record of discipline. With such inconclusive evidence as we found in this case with respect to the Claimant we find the discipline assessed to be unjust and unwarranted. For the reasons stated above the Claim will be sustained. Payment for any wage loss shall be in accordance with Rule 35 (g) - Investigations.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

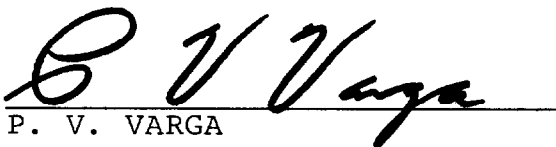
Attest: 
Nancy J. Dwyer - Executive Secretary

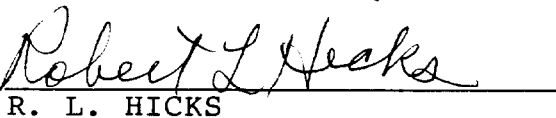
Dated at Chicago, Illinois, this 1st day of August 1990.

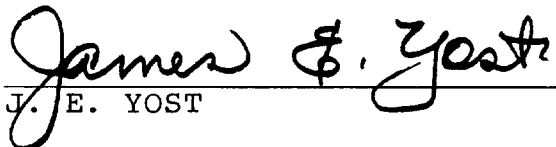
CARRIER MEMBERS' DISSENT
TO
AWARD 11915, DOCKET 11833
AND
AWARD 11917, DOCKET 11840
(Referee Prover)

Claimants were part of a "crew" that was given a specific assignment and refused to comply with proper instructions. Claimant Brown never did comply. The other two members did not comply until after they, that is, the "crew," were summoned to the Assistant General Foreman's office. The "crew" demonstrated their collective insubordination with their feet. While the Majority finds the Sheet Metal Worker guilty, it concludes that there is no "...conclusive evidence...that (the electrical worker) was guilty of insubordination..." That the electrical worker "crew" member was not with the other "crew" members does not warrant the assumption that he was proceeding to hook up the consist of Train 107.

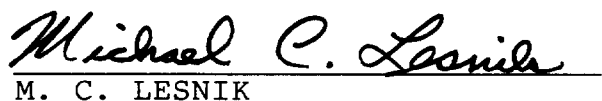
We Dissent.


P. V. VARGA


R. L. HICKS


J. E. YOST


M. W. FINGERHUT


M. C. LESNIK