

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40971
Docket No. MW-41049
11-3-NRAB-00003-090413**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. L. Corcoran by letter dated July 9, 2008, which followed a fact-finding session on June 30, 2008 concerning his alleged violations of Montana Rail Link General Code of Operating Rules 1.13 and 1.15 in connection with his alleged failure to comply with instructions from Roadmaster A. Knutson to report for duty on June 11, 12 and 13, 2008 and failure to report for duty on June 11, 12 and 13, 2008, was arbitrary, capricious, without just cause and in violation of the Agreement (System File MRL-226-M).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. A. Corcoran shall now be ‘... returned to service and his record be cleared of the charges and proceedings of this fact-finding. We further request that Mr. Corcoran be made whole for any loss of wages, loss of overtime, and fringe benefits, including but not limited to, insurance, railroad retirement credit, flex time, etc.’”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant was dismissed for the Rule violations noted in the Statement of Claim. At the time of the incidents in question, the Claimant had some 18 months of service with the Carrier after subtracting furlough time. His discipline record contained a 5-day suspension in September 2007 for a similar reporting violation of Rule 1.15.

According to the record, the Claimant was a Laborer on 3-person Welding Crew 1964 that was working in the vicinity of Big Timber, Montana. His address of record was in Spokane, Washington. He completed the request form to use flex days to be off work on June 9 and 10, which was approved. He was off work those two days. He was due to report back to the crew for work at 7:30 A.M. on June 11, 2008.

According to his testimony, he woke up in Big Timber on the morning of June 11 and realized his steel-toed work boots were not in his vehicle and had been forgotten back in Spokane. He used his cell phone to call his Roadmaster while he was in the Columbus, Montana, area as he was driving east toward Billings. The Claimant had a brother who lived in Billings who had a spare pair of boots. He told the Roadmaster of his situation at about 7:00 A.M. that morning.

According to the Roadmaster's testimony, he did not believe in the legitimacy of the Claimant's story. The Roadmaster wanted the Claimant to actually show up

at Big Timber so he authorized the Claimant to report for work late on June 11 as soon as he could do so.

The Claimant did not report for work at all on June 11. According to the Claimant's testimony, the spare boots his brother had were too large for him and he was concerned that they would not safely provide toe protection. He was not able to borrow any boots from others he knew in the area. He was also effectively broke and had no money to buy boots or gasoline for his car to go back to Spokane to retrieve his boots. Nonetheless, he had no further contact with the Roadmaster until June 12. Their testimony about the time of the call and the content of the call that day is somewhat conflicting. According to the Claimant's testimony, the Roadmaster told him to report for work on June 13 with or without his personal protective equipment (the boots). Because the Claimant had, by then, informed the Roadmaster of his predicament, he was in a catch-22 type of situation. If he did not report for work he would be subject to discipline. If he did report, but without the boots, he would also be subject to discipline. Regardless of what was actually said between the two individuals during the call of June 12, the Claimant admitted he knew the Roadmaster wanted him to show up on June 13. He did not report for work again, with boots, until Monday, June 16.

According to the Roadmaster's testimony, he informed the Claimant that his absences would not be excused if he did not report for work with proper equipment.

If the Claimant's story was true, he could have provided corroboration of his account by showing up for work on one of the three days which would have demonstrated that he was at least telling the truth about being physically present in the Big Timber area during the period of June 11–13, 2008. His failure to do so undermined the credibility of his story.

Given the foregoing factors, the record is found to contain substantial evidence in support of the Carrier's determination that the Claimant did refuse to comply with the instructions of his supervisor and did fail to report for work as required without any credible mitigating circumstances. As a result, the record does not establish a proper basis for the Board to modify the Carrier's disciplinary decision.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of April 2011.