

PUBLIC LAW BOARD NO. 2206

AWARD NO. 40

CASE NO. 55

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension of Bus Driver, John H. Russo was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File S-P-182C).
- (2) Bus Driver John H. Russo be compensated for all time lost and the discipline be stricken from Claimant's record.

OPINION OF BOARD:

Claimant was employed as a machine operator assigned to a steel relay gang at Interbay, Washington. The gang usually worked regularly scheduled hours 7:00 AM to 3:30 PM but, commencing August 4, 1978, Claimant and the other employees on the gang were assigned to work one or two hours overtime each afternoon. On August 9, 1978 Claimant approached his Foreman at about 1:30 PM and asked to be released at the regular quitting time in order to keep an appointment with an attorney. The Foreman denied his request and informed Claimant that Roadmaster Mouat had directed that all of the gang employees must work overtime that day. At the suggestion of the Foreman, Claimant approached the Roadmaster directly at about 3:00 PM and asked permission to leave for his lawyer's appointment. Mouat denied that request

and advised Claimant that he was needed to work overtime, whereupon Claimant stated in words or substance that he was leaving at 3:30 PM with or without permission. At 3:30 PM Claimant did, in fact, leave the job and he did not work the overtime as ordered.

Under date of August 16, 1978 Claimant was served with a Notice of Hearing, as follows:

"You are hereby notified in accordance with the Brotherhood of Maintenance of Way Employee's Schedule to attend investigation in the tool house at Interbay, Wa. on Thursday, August 24, 1978 at 11:00 A.M., to ascertain the facts and determine your responsibility in connection with your alleged insubordination and failure to comply with instructions from proper authority on August 9, 1978."

Upon receipt of the foregoing hearing notice, Claimant filed through the Organization a request for an "unjust treatment" hearing, citing Rules 15-B, 40 and 60 of the Agreement. Carrier's Superintendent responded to that request on August 30, 1978, as follows:

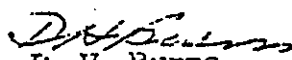
Dear Mr. Tulberg:

I have your letter of August 21, 1978 requesting a hearing account alleged unjust treatment of John H. Russo by Roadmaster G. J. Mouat on August 9, 1978.

We will reschedule the original investigation, earlier postponed at your request, to 10 a.m. at Interbay, Washington on September 8, 1978, and by copy of this letter to Mr. Mouat, will he kindly arrange to reschedule the investigation for that time.

That investigation will bring out thoroughly and completely whether or not Mr. Russo underwent any unjust treatment.

Sincerely,


D. H. Burns
Superintendent

cc: Mr. R. F. Knutson
Mr. G. J. Mouat

The hearing was held on September 8, 1978 and Claimant appeared and was represented by his Vice General Chairman. Review of the transcript indicates that Claimant knew of the lawyer's appointment on August 4, 1978, that shortly before end of shift on August 9, 1978 he requested and was denied permission to leave early, that he orally repudiated the directive of the Roadmaster not to leave early, and that he did leave early without permission. The Organization appeals the ten-day suspension imposed by Carrier upon Claimant for this proven misconduct primarily upon the ground that Carrier violated Rule 15-B of the Agreement, thereby justifying Claimant's otherwise insubordinate behavior. The Organization also asserts that Carrier violated Rule 62 by not according Claimant a separate hearing on the question whether Carrier's denial of his request was "unjust treatment". The Agreement provisions upon which the Organization bases its claim read as follows:

"RULE 15. LEAVE OF ABSENCE.

* * *

B. The arbitrary refusal of a reasonable amount of leave of absence to employees when they can be spared or failure to handle promptly cases involving sickness or business matters of serious importance to the employees, is an improper practice and may be handled as unjust treatment under this Agreement."

* * *

RULE 62. UNJUST TREATMENT.

An employee who considers himself unjustly treated in matters other than discipline, or in matters other than those arising out of the interpretation and application of the rules of this Agreement, shall have the same right of hearing and appeal as provided in Rule 40, if written request is made to his immediate superior within twenty (20) calendar days after the date of the occurrence of the cause for complaint."

In the facts of this case, we find no merit in the assertion that Carrier violated Claimant's right to an "unjust treatment" hearing. The question whether Carrier's denial of the early release request was proper was joined fully in the September 8, 1978 hearing. A separate subsequent hearing on this issue would have been redundant; even if, arguendo, an employee charged with misconduct is entitled to use the "unjust treatment" hearing as a tactical response, a question upon which we have serious reservations. In any event, the fully developed record for the September 8, 1978 hearing shows no arbitrary or unreasonable denial by Carrier of the belated request to avoid overtime work. We conclude that Carrier did not violate Rule 15-B in this case. See PLB 2206-16. Nor can we find inappropriate the imposition of a ten-day suspension for Claimant's proven insubordinate refusal to obey the reasonable directions of his authorized supervisors. The claim must be denied.

AWARD

Claim denied.

C. L. Melberg
C. L. Melberg, Carrier Member

F. H. Funk
F. H. Funk, Employee Member

Dana E. Eischen, Chairman

Date: 9/24/81