

PUBLIC LAW BOARD NO. 2206

AWARD NO. 61

Case NO. 63

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's forty-five (45) days suspension from service of B&B Helper, Don Howard, was without just and sufficient cause. (System File 15-3)
2. That B&B Helper, Don Howard, now be allowed pay for all time lost because of the forty-five (45) days suspension referred to in part one (1) of claim.

OPINION OF BOARD:

On June 6, 1979 Claimant was working as a B&B Helper on a gang under the supervision of Foreman A. Bell. The Foreman learned of a death in his family shortly before the start of the 7:00 AM shift and notified his supervisor that he would be absent for three days. He intended to leave B&B Carpenter Jones as Acting Foreman, but Jones had not yet shown up for work by 9:00 AM when Bell had to leave. According to the testimony of Bell, Claimant Howard and B&B Helper Brown, who was also present at the time, the Foreman left Howard in charge as Acting Foreman pending Jones' arrival, with instructions to turn over the keys and supervisory responsibility to Jones, assuming Jones was agreeable to accept that delegation. Bell left after leaving instructions with Howard for the gang to complete certain

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construction work and also inspect fire extinguishers in a nearby building. It is not disputed that Bell told Howard he did not expect Jones to come into work until the next day and, in any event, he was not sure Jones would accept the appointment as Acting Foreman, in which case Howard was to continue as Acting Foreman until Bell's return.

In the meantime, B&B Helper Miller, a friend of Jones, departed to fetch Jones to the job. Bell left the scene and shortly thereafter Miller arrived with Jones. Mr. Jones immediately began giving orders and an argument ensued between him and Claimant Howard and B&B Helper Brown as to who was in charge. As a result of this exchange, Howard threatened to call in the Special Agent but Jones in fact did so. The Special Agent and an Assistant Trainmaster arrived and looked for Howard and Brown for about thirty minutes before finding them apparently performing fire extinguisher inspections. After reviewing the situation, the Assistant Trainmaster removed Claimant and Brown from service pending an investigation.

A full-scale investigation was held on June 12, 1979 at which Howard and Brown appeared as their own representatives, after waiving the right to other representation. On July 10, 1979 Grievant was advised of the outcome with respect to his case as follows:

As a result of investigation accorded you on Tuesday, June 12, 1979, the following entry is being placed on your personal record suspending you from the services of the Burlington Northern Inc. for a period of forty-five (45) days:

July 10, 1979. Suspended from the services of the Burlington Northern Inc. for a period of forty-five (45) days, commencing Wednesday, June 6, 1979, to and including Friday, July 20, 1979, for violation of Rules 57, 661, 664, 665, and 667 of the Burlington Northern Safety Rules by entering into an altercation, thereby being insubordinate to your acting foreman, failure to comply with instructions from proper authority by absenting yourself from duty without authority, and failure to perform your duties between 7:30 a.m., and 10:30 a.m., on Wednesday, June 6, 1979, at the B&S Shop, 14th Street, Chicago, Illinois.

In assessing this discipline consideration was given to your previous rule violations of a similar nature.

Interviewed by the Terminal Superintendent and advised that if involved in a similar rule violation in the future, it may result in more drastic discipline being assessed.


J. A. Ketcham,
Assistant Superintendent

We do not know the outcome of Mr. Brown's charges but the Howard discipline was appealed by the Organization. The matter was denied at all levels of handling and finally appealed to this Board for disposition.

Close analysis of the record, especially the hearing transcript, persuades us that Carrier erred in finding Claimant guilty of most of the offenses charged and consequently assessed inappropriately severe discipline. It is apparent from the record that he responded intemperately to Jones' assertion of authority, and to that extent he "entered into a (verbal) altercation". The evidence plainly shows, however, that this occurred against a backdrop of confusion regarding Jones' actual status on June 6, 1979 and in the face of substantial provocation from Jones. The failure of Foreman Bell to establish and communicate a chain of command, while perhaps understandable in light of his own pressing personal problems, created a situation fraught with potential for trouble since the record shows a history of animosity and disagreeable exchanges between Jones and Howard, and their respective adherents Miller and Brown, all of which was within the knowledge of Foreman Bell. Given the palpable confusion regarding the line of authority that morning, it was unreasonable to find that Claimant was insubordinate to Jones or failed to follow instructions from proper authority. The finding that he absented himself without authority or failed to perform duties between 7:30 and 10:30 AM is patently wrong because the evidence shows to the contrary

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that Howard and Brown performed work assigned to them by Foreman Bell during that time. On balance, we find that Claimant is not without fault but he is not culpable of any of the charges except for entering into a verbal altercation. We shall reduce the penalty from 45 days to 10 days suspension without pay and order Carrier to compensate Claimant for the difference.

AWARD

Claim sustained to the extent indicated in the Opinion. Carrier shall implement this Award within thirty (30) days of its execution.

F N Funk
Employee Member

W. Hodynsky
Carrier Member

Dana E. Eischen, Chairman

Date: November 30, 1982