

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 25

CASE NO. 34

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) and
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former Fort
Worth & Denver Railway Company)

STATEMENT
OF CLAIM:

1. That the dismissal of Mr. R. J. Duckett was without just and sufficient cause and in violation of the current Agreement.
2. That the Carrier shall now return Claimant to his former position with seniority and all rights restored unimpaired and with compensation for all wage loss suffered.

FINDINGS:

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Claimant Roderick J. Duckett has been an employee of this Carrier since September 3, 1980. On October 18, 1983, Claimant was working with the Carrier's Steel Gang, under the direct supervision of Extra Gang Foreman, Mr. Jimmy Wayne Moss, Jr., in the vicinity of Fruitland, Texas. On November 9, 1983, the Carrier dismissed Claimant from its service, writing him: "This is to notify you that you are hereby dismissed from the service of the Burlington Northern Railroad for violation of Rules 563, 564 and 567 of the Burlington Northern Safety Rules in connection with your insubordinate conduct on October 18, 1983 while assigned as a Laborer on steel gang working in the vicinity of Fruitland, Texas, as evidenced by a formal investigation afforded you on October 26, 1983."

Rules 563, 564, and 576 of the Burlington Northern Safety Rules read as follows:

"563. Burlington Northern service demands the faithful, intelligent, courteous and safe discharge of duty. Courteous, orderly conduct is required of all employees. Boisterous, profane, sexist or vulgar language is forbidden. Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate supervisor."

"564. Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in such a manner that the railroad will be subjected to criticism and loss of good will."

"576. Employees must comply with instructions from proper authority."

The transcript of investigation shows the following questions by the Hearing Officer and answers by the Foreman:

"Q. On the afternoon of October 18, 1983, did you instruct Mr. Duckett as to some duties you wished him to perform?

A. Yes sir.

Q. Would you please tell us what your instructions were?

A. To go up ahead of the crane and help another man straighten plates.

Q. What happened when you gave these instructions?

A. Mr. Duckett walked about a pole length down the track and turned around and came back and said that he was not going down there and straighten plates in front of the Pettibone. He wanted to stay back behind the machines.

Q. Did Mr. Duckett give you any reason for this?

A. No sir.

Q. At this point then, was Mr. Duckett refusing to comply with your instructions?

A. Yes sir.

Q. What did you do then?

A. I asked Mr. Duckett to go ahead and go down there and straighten the plates, and he still refused. I asked him several times to go on ahead and straighten the plates, that I didn't need him behind the machines and he refused, and finally he said fuck you, I'm not going down there. I'm going to stay behind the machines, and I said what did you say. He said fuck you. I'm going to stay right here..." (Tr., pp. 4-5).

Section Laborer W. D. Devoss answered to questions of the Hearing Officer as follows:

Q. Would you please tell us what you heard and what you observed?

A. Mr. Moss told Mr. Duckett after he'd come back from straightening plates in between 2 spikers to go back up front and straighten plates, that one could handle it, and he said no at first. Then he walked off, walked up there about a pole length away. Then he came back and he said no, that I was gonna stay here and straighten plates.

Q. Excuse me. By he, who do you mean?

A. Mr. Duckett. And he said no, Mr. Duckett said no, I'm gonna stay here and straighten plates, and they got kind of in an argument, and Mr. Duckett told Mr. Moss, he said fuck you, I'm gonna stay here and straighten plates." (Tr., p. 9).

Claimant testified, answering questions of the Hearing Officer, in part as follows:

Q. Did Mr. Moss instruct you to go back out in front of the crane?

A. Right. He instructed me to go back towards it. I said Wayne, the man is caught up. He said well, I don't care. Just go on back up there.

Q. Did you do so?

A. No, see, that's when I start asking him Wayne, why you take my job when this man's coming up here extra, and I said why you don't send him up front, I said cause this is my job what I've been doing all day, which is what everybody had been doing. They'd get a job, they does it all day, and this was when we was going through the motion he saying well, you don't like it, go home, go home, go home, and he was belching me with his stomache telling me to get off the track." (Tr., p. 13).

The evidence is clear beyond doubt that Claimant refused to comply with a reasonable order of his Foreman. Claimant felt that his seniority was such that the Foreman should have ordered the extra man to go forward to do the more strenuous work, and he also may have felt that it really was not necessary for him to go up front considering the amount of work at the time. Apparently, Claimant resented his Foreman's order, regarding it as unreasonable and as unfair.

The fact remains, however, that Claimant flat refused to follow instructions. By his refusal to follow instructions in this incident, he violated the Burlington Northern Safety Rules 563, 564, and 576. Employees generally understand the principle: First, obey; Second, grieve. If Claimant felt that he had a fair complaint against his Foreman, he should first have obeyed instructions, and secondly, he could have sought redress through the grievance machinery.

There are not sufficient mitigating circumstances presented on this record to support a conclusion other than the inescapable one that Claimant's conduct amounts to insubordination. Claimant's employment record shows two previous dismissals for similar violations. In the circumstances of this case, the Carrier's discipline was not excessive.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman R. J. Duckett is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


C. F. FOOSE, EMPLOYEE MEMBER


H. H. PAYNE, CARRIER MEMBER

DATED: April 17, 1985