

PUBLIC LAW BOARD NO. 3460

Award No. 1
Case No. 1

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) the dismissal of Sectionman Vince D. Kaufman, July 9, 1980, was improper, without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Sectionman Vince D. Kaufman be reinstated with all seniority and other rights unimpaired and be compensated for all time lost."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a section laborer, was employed by Carrier on September 4, 1979, and, at the time of the incidents involved herein, was working on Extra Gang No. 978 in Nebraska. On June 5, 1980, claimant was charged with failure to properly wear his safety glasses as required on June 4 and June 5, 1980, and for insubordination and failure to comply with instructions. Following an investigation held on June 11, 1980, claimant was found guilty of the charges and dismissed from Carrier's service.

The record indicates that on June 4, 1980, at the work site the Assistant Roadmaster noted that the claimant, Mr. Kaufman, was not wearing his safety glasses properly. He was wearing the glasses stuck up underneath his hardhat, rather than around his ears. This was brought to claimant's attention by the Assistant Roadmaster and, after a short exchange, claimant obeyed the Assistant Roadmaster's instructions, taking his safety glasses out from under his hardhat and

placing them on his head properly. On the following day, claimant was again observed by the gang's foreman wearing his glasses improperly and was instructed to place them on his ears as they were designed to be worn. The claimant refused and was again asked to put them on properly and told that if he did not obey he would be removed from service. Mr. Kaufman refused again to comply with the instruction and was removed from service. He was brought to the Assistant Roadmaster's office thereafter and again was asked to comply with the instructions but refused to do so. As a result of these incidents, the investigation was held and the discipline administered.

The essential element in claimant's defense was that the glasses would not stay on his face properly when he wore them in the customary manner. The Organization contends that the claimant informed his foreman that he was unable to keep the glasses on when worn in the customary manner and that the Assistant Roadmaster was also aware of that particular problem. It is also argued that there were devices available, such as safety bands, which could have remedied claimant's problem yet he was not advised that such a device was available. The Organization insists that the claimant endeavored to wear the glasses in a manner which would afford protection from debris even though they were worn in an unusual manner. The Organization argues that the claimant did comply with the safety rules since he did wear safety glasses and his eyes were protected. Petitioner admits that claimant was aware of the danger to himself in not wearing safety glasses and felt that the alternative was to wear the glasses in the manner in which they would fall off, creating even greater hazards. Petitioner insists further that both Carrier officials were aware of the claimant's problem with the glasses and failed to offer an alternative which would solve the problem. The Organization insists that the discipline of dismissal was unjust and wholly unwarranted under the circumstances.

The essence of Carrier's position in this matter is that the claimant failed to properly wear his safety glasses and, when instructed in the proper manner of wearing them on three separate occasions, on the second day failed to comply with those instructions. Thus, he was not only operating in an unsafe manner but was obviously insubordinate, according to Carrier. Carrier notes further that claimant never made any attempt to correct the situation of the glasses not fitting properly prior to June 4 or June 5 and, furthermore, had a number of alternatives

available to him. Carrier notes that he could have bent the glasses back so that they would have fitted properly, he could have gotten another pair of glasses or a different type of glasses and he could have secured a headband. He did none of those things but simply refused to obey instructions given to him by his superiors on the day in question. Therefore, he was clearly insubordinate, according to Carrier, and the discipline was warranted.

Among other defenses, claimant indicated that other members of the gang were also wearing their glasses in the same manner that he was. Obviously this defense is improper since a poor safety practice by one employee does not justify a similar practice for another employee, particularly when he is instructed on the proper manner of using the equipment. An examination of the record herein indicates that there is clearly no defense for claimant's position of refusal to obey the instructions of the supervisors. Even though the glasses did not fit properly and it would have impaired his activity, he did, indeed, have alternatives or could have asked for relief rather than simply refuse to wear them in the manner in which he knew he was supposed to do. Safety is of paramount importance, particularly in operations such as claimant was involved in, and there is no justification for his refusal to comply with instructions. On the other hand, the supervisors involved could, indeed, have instructed him, since they were aware of his difficulty in wearing the glasses, with alternatives and did not do so. Although this does not excuse claimant's behavior, it does indicate some dereliction on the part of the supervisors involved in this matter.

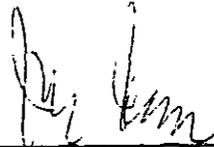
Based on the entire record and the nature of the infraction involved, it is believed that the discipline of dismissal was excessive under all the circumstances. Therefore, the Board believes that the discipline has served its purpose and claimant shall now be reinstated to his former position with all rights unimpaired but without compensation for time lost.

AWARD

Claim sustained in part; claimant will be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman

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

W. Hodynsky
W. Hodynsky, Carrier Member

St. Paul, Minnesota
September 30, 1984