

PUBLIC LAW BOARD NO. 3460

Award No. 24
Case No. 24

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "(1) Claimant R. C. Price, Section Foreman, was suspended from service for fifteen days which was unwarranted and without just and sufficient cause.
- (2) Claimant shall now be paid for all lost time, including overtime, from July 25 through August 8, 1980, and his record be cleared."

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 foreman, was charged with insubordination and failure to comply with instructions from proper authority on June 25, 1980. Following an investigation, he was found guilty of :

"The transcript of investigation reveals you were argumentative toward Assistant Roadmaster Balgaard after he had given you instructions, in violation of Rules 700 and 702B...."

For this infraction claimant was suspended for fifteen days.

The record reveals that at about 7:30 A.M. on the date in question Assistant Roadmaster Balgaard gave the claimant instructions as to the sequence of activity contemplated for his crew that morning. Claimant disagreed with the sequence given him and argued with the Assistant Roadmaster who had become his supervisor only that morning apparently (the record indicates that claimant did not

know that Balgaard was his supervisor until two hours after the incident). The transcript of the investigation indicates that Balgaard became loud and abusive with respect to Foreman Price in the course of the exchange at 7:30 that morning. While Price did not conform to the instruction at the time, he did not respond to the abusive tone and language of the Assistant Roadmaster. In fact, Price then telephoned the Roadmaster and asked whether, indeed, this was the sequence which the Roadmaster wanted him to adhere to. Upon being instructed contrary to his objections twice by the Roadmaster on the telephone, he conformed to the instructions.

Carrier maintains that claimant's conduct was insubordinate and that the penalty was lenient in view of the seriousness of the offense committed. The Organization, on the contrary, argues that the Assistant Roadmaster's conduct was provocative and there was no insubordination on the part of Price established at the investigation. Additionally, it is noted by the Organization that Price had an exceptionally good record and some 18 years of service with Carrier.

The circumstances surrounding this incident were at best strange. First, it is evident that the claimant herein was not clear that Balgaard was entitled to give him any instructions on the day in question since it was Balgaard's first day as Assistant Roadmaster. In fact, the record is specific in that Price was not aware of Balgaard's status as a supervisor until some two hours after the incident in question. Additionally, it is evident that Price was not found guilty of insubordination but rather merely of being argumentative with his supervisor. On balance, it is the Board's view that while Price was incorrect in not following the instructions, both of Balgaard and the Roadmaster upon their being given to him, the circumstances did not warrant the extent of discipline imposed in this instance. There was a minor transgression with peculiar circumstances and a new supervisor involved. The guilt established was that of being argumentative, rather than that of being insubordinate. For the reasons indicated, therefore, the penalty shall be reduced to a written reprimand and claimant shall be made whole for all loss of compensation as a result of the improper penalty.

AWARD

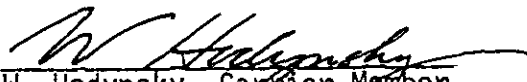

Claim sustained in part; suspension shall be reduced to a written reprimand and claimant shall be made whole for all loss sustained as a result of the improper suspension.

ORDER

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



I. M. Lieberman, Neutral-Chairman


W. Hodynsky, Carrier Member
F. H. Funk, Employee Member

St. Paul, Minnesota

May 22, 1985