

PUBLIC LAW BOARD NUMBER 3566

Award Number: 12
Case Number: 12

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 discipline of Trackman C.D. Prewett for alleged violation of General Rules 500, 502 and 502(b) on January 4, 1983 was arbitrary, capricious, unwarranted and on the basis of unproven charges.

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On January 4, 1983, Claimant was scheduled to attend an investigation at Carrier's Okmulgee Depot, in the vicinity of Claimant's worksite. The investigation was scheduled for 1:00 PM. On that date, Claimant approached Assistant Roadmaster R.D. Honeycutt and asked him if he (Claimant) could leave work at noon in order to speak to his employee representative prior to the investigation. Honeycutt informed Claimant that he could not leave work at noon, but that he would take Claimant off the track in time to speak to his representative. At approximately 12:30 PM, Honeycutt saw Claimant in the depot and noticed that Claimant was not wearing his work clothes.

As a result of these incidents, Claimant was charged with failing to comply with Honeycutt's instructions regarding the January 4, 1983 investigation. A hearing was held in order to investigate the charge against Claimant. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had violated Carrier's General Rules 500, 502, and 502(b), and that he should be dismissed. The Organization filed a claim protesting Carrier's actions and requesting that Claimant be returned to service with pay for all time lost and with all rights intact. The claim was denied at all levels of appeal on the property, although Carrier decided to reinstate Claimant with rights intact on April 17, 1983. The Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was suspended for just cause, and if not, what should the remedy be.

Carrier's General Rule 502(b) states that "Employees must comply with instructions from the proper authority." Rule 502 states in part that employees "must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority." Rule 500 provides in part that "Employees will not be retained in the service who are ...insubordinate..."

The record shows that when his gang was given their lunch hour at 12:00 PM, Claimant left the track and went to the outfit car to change clothes. He then proceeded to the depot, where he was spotted by Honeycutt. There is no evidence that Honeycutt told Claimant that he would not be allowed a meal


period on the day in question. It must therefore be assumed that Claimant was not required to remain on duty while the rest of his gang went off duty for lunch. There is thus no evidence that Claimant absented himself from duty without permission in violation of Carrier's Rule 502. Claimant was also cited for violation of Rule 500, presumably because his conduct constituted insubordination. Insubordination is the deliberate refusal of an employee to obey the direct order of a superior. Since Claimant was not ordered to remain on duty during his meal period, it cannot be held that he violated Rule 500.


Claimant was also cited for his alleged violation of Rule 502(b). While Claimant was properly off duty during his meal period, his conduct technically violated Rule 502(b) since he failed to comply with Honeycutt's instructions. However, it is the opinion of this Board that the discipline assessed was unduly harsh and excessive under all the circumstances. At the hearing, Honeycutt testified that Claimant's gang took their lunch period at 12:10 PM on the day in question. He testified further that he saw Claimant in the depot at "20 till 1:00." Compliance with Honeycutt's instruction would have required Claimant to sit idle by the track until Honeycutt decided Claimant should be allowed to report for the investigation. It is not clear from the record why Honeycutt wished Claimant to sit by the track while the rest of the members of Claimant's gang ate lunch. It is clear, however, that the assessment of a suspension of more than three months for failure to obey such an instruction was a clear abuse of Carrier's managerial discretion. Faced with Honeycutt's instruction, Claimant had an obligation to obtain permission from Honeycutt to change his clothes on his lunch hour, or at least inform Honeycutt that he wished to do so.


Nonetheless, in view of the almost trivial nature of Claimant's offense and Claimant's past service record, the offense warranted a two-day suspension at most. Accordingly, Claimant shall be compensated for all pay lost in excess of two days.

AWARD:

Claim sustained in part and denied in part. Carrier shall immediately compensate Claimant for all pay lost in excess of two (2) days that Claimant lost as a result of his suspension.


Neutral Member


Carrier Member


Organization Member

Date:

February 1, 1985