

PUBLIC LAW BOARD NO. 4104

Aug 9 4 27 PM '83

Case No. 26

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

1. The dismissal of B&B Water Service Mechanic D. Howard for alleged 'violation of Rules 570, 576 and 584' was arbitrary, without just and sufficient cause, on the basis of unproven charges, and in violation of the Agreement. (System File 1 Gr MWA 83-6-24c).

2. The Claimant shall be reinstated to service with seniority unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, B&B Water Service Repairman, after investigation was dismissed as the result of an incident on December 10, 1982. Specifically, Claimant was found guilty of his failing to comply with the instructions of a supervisor in regard to the repair of a leaking heat pipe.

The Organization appealed Carrier's dismissal of the Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier failed to provide the local chairman with a copy of the transcript of the investigation or a copy of Claimant's dismissal notice as required in Rules 40(d) and (e). It argues that such violation prejudiced the local chairman's ability to present an appeal of Carrier's decision based on the record of the case.

As to the merits, the Organization asserts that Claimant was unable to permanently repair the radiator because he did not have the proper materials to do so - propane torch, flux, core sholder, and acid. Claimant attempted to obtain the materials from the supply station and was not able to contact his supervisor who was in school at that particular time. During the investigation hearing, Claimant stated that he was not aware that he could purchase the materials from a local vendor utilizing Carrier's credit; nor did he have the personal funds to acquire such materials. Claimant advised Maintenance Secretary A. McNeeley (the only authority available) that the radiator was not permanently repaired; and proceeded to perform emergency work at other locations. In the Organization's view, Claimant attempted to repair the radiator and without the necessary materials to do so, continued with other emergency repairs assigned to him. Under these circumstances, the Organization argues that dismissal is excessive to the incident in question. Accordingly, it asks that the claim be sustained on its merits as well as for procedural reasons.

Carrier, on the other hand, asserts that it did not violate Rules 40(d) and (e) for its alleged failure to provide a copy of the transcript of the investigation or Claimant's dismissal notice to the local chairman. It contends that Local Chairman

Salvino was sent a copy of the transcript by Terminal Superintendent Starling on March 10, 1983. As such, Carrier argues that it complied with the required procedures on the property.

As to the merits of the claim, Carrier maintains that Claimant was instructed by his immediate supervisor to make the necessary permanent repairs to the heat pipe and failed to do so. The result, Carrier insists, created a potential safety hazard with the possibility of someone slipping and falling.

Furthermore, Carrier notes that Claimant had been disciplined on six (6) different occasions for violations of the similar nature as his dismissal. It argues that the penalty of dismissal for this offense when the past record is considered is justified. Accordingly, it asks that the claim be denied.

A review of the record evidence convinces the Board that dismissal of Claimant is unjustified. While it is clear that Claimant did not permanently repair the leaking pipe, his attempts should not be overlooked. Claimant was not able to proceed with the repairs due to the lack of necessary materials; and when he could not locate his supervisor, proceeded with the remaining work assigned to him on that day.

Under such circumstances, a suspension to January 31, 1987 is justified. Thereafter, Claimant is to be made whole for any lost wages or benefits. This suspension serves as notice to Claimant of the seriousness of his misconduct. In addition,

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we note that Claimant has been restored to service, thereby
reducing Carrier's liability to a certain degree. Accordingly,
and for the foregoing reasons, the claim is sustained to the
extent indicated in the Opinion.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor act as approved June 21, 1934:

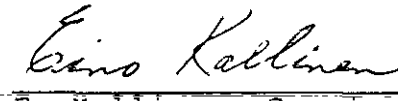
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and


That the Agreement was violated.

AWARD:

Claim sustained.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

July 31, 1990