

NATIONAL MEDIATION

PUBLIC LAW BOARD NO. 4104

Aug 9 4 25 PM '90

Case No. 27

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 discipline (mark of censure) imposed upon Grinder Operators S.Z. Villafuerta, L.G. Flores; Welders B.S. Master, M.L. Weed, R.A. Newberry; Welder Helper R.W. Boyd and Laborer E.L. Chisholm for alleged 'violation of Burlington Northern Safety Rule 570' was arbitrary, on the basis of unproven charges and in violation of the Agreement (System File Weld/Gr GMWA85-5-16c).

2. The Claimants' records shall be cleared of the charge leveled against them and they shall each be compensated for all time lost and for all expenses incurred while attending the investigation."

OPINION OF BOARD: The employees so named were employed on Regional Welding Gang No. 1 welding joints, with assigned hours at 7:00 a.m. to 3:30 p.m.

On December 12, 1985 four of the Claimants did not report to the job site until 8:55 a.m. On December 12, 1984 Claimants left the job site without permission at 1:00 p.m. Claimants submitted their timerolls on the dates in question and claimed eight (8) hours.

As a result, Carrier conducted an investigation on January 21, 1985 at which Claimants were found guilty and each received a mark of censure on his personal record for this violation. The Organization appealed Carrier's action. 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 violated Rule 40(c) which requires that the notice must specify the charge for which the investigation is being held. It argues that the investigation was called regarding the alleged falsification of the timeroll for December 12 and 14, 1984. However, the employees were charged with violation of Safety Rule 570 by being absent from duty without proper authority. It alleges that an employee cannot be tried on one charged (falsification of time card) and be found guilty of another charge (absent from duty without proper authority).

The Organization also alleges that Rule 40(a) concerning time limits was violated when the investigation was not held within fifteen (15) days from the date of the occurrence. The alleged occurrences were on December 12 and 14, 1984 and the investigation was not scheduled to be heard until January 17, 1985; beyond the 15 day limit.

As to the merits, the Organization maintains that Claimants had worked overtime on december 13, 1984 and took this time off on december 14 by leaving early. It contends that such has been a past practice on the property and accordingly the claim should be sustained on its merits as well as procedural objections.

Carrier, on the other hand, denies that the Agreement was violated. Rule 40(c) requires that the investigation notice must specify why the investigation is being held in order for the charged party to properly prepare for the investigation.

In this case, the investigation was held in regard to the alleged falsification of the timeroll. It contends that by claiming pay for time not worked assumes that the Claimants had left the property while on duty without permission. Claimants were duly prepared to proceed with the investigation fully aware of what they were being charged with.

As to the second procedural objection, Carrier contends that the fifteen (15) day time limit commences from the date information is obtained by an officer of the Company. Carrier first received knowledge of the Claimants' departure from work without permission on January 4, 1985 at Foreman Prescott's investigation. Hence, when the investigation was scheduled for January 17, 1985, it was within the fifteen (15) day time limitation.

As to the merits of the claim, Carrier officials testified that there was no existing policy that an employee is able to trade time on one day if they worked overtime on a previous day. The Claimants never denied that they left work without permission and were to be paid for time not worked. Accordingly, it insists that the action invoked is appropriate in this case, and that the claim be denied.

A review of the record evidence convinces us that the claim must fail. This is so for a number of reasons.

4104-27

Case No. 27

First, the record evidence reveals that Claimants were appropriately notified of the charges. The notice of investigation in this case clearly advised the Claimants as to the reason for the investigation. Second, there is no support for the Organization's allegation that the time limits in the handling of the investigation was violated. Carrier became aware of the timeroll discrepancy at Foreman Prescott's investigation on January 4, 1985 and appropriately scheduled the investigation for January 17, 1985.

As to the merits, the transcript establishes, without any doubt, that Claimants did falsify the timeroll and did absent themselves from duty without proper authority. The defense raised by the Organization alleging a policy that allows employees to trade time if they had worked overtime on a previous day must fail. There was substantial testimony by Carrier officials refuting the existence of such a practice or policy. Substantial evidence does exist in the record to sustain the Carrier's conclusion that discipline was appropriate. Accordingly, the claim is denied.

4104-27
Case No. 27

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

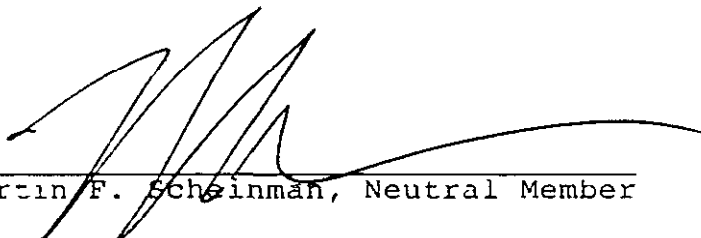
That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

July 31, 1990