

PUBLIC LAW BOARD NO. 4104

Case No. 34

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 Track Inspector T.J. Early for alleged 'violation of Rules 46 and 500 of the Maintenance of Way Operating Rules' was arbitrary, without just and sufficient cause and wholly disproportionate to the charge leveled against him.

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

OPINION OF BOARD: At the time this dispute arose, Claimant T.J. Early, was employed by Carrier as a Track Inspector, with over fourteen years of seniority. By letter dated February 13, 1984, Carrier dismissed Claimant from its service after an investigation and hearings for Claimant's alleged failure to comply with Track and Time Permit No. 2 on January 19, 1984.

The Organization timely appealed Carrier's decision. Carrier rejected the appeal. Thereafter, the Organization advanced the claim to this Board for adjudication.

The Organization contends that Carrier's decision to discharge Claimant was improper and harsh. In support of this contention it relies on Claimant's testimony. According to Claimant, he did proceed beyond the limits of his assigned territory but obtained Track Dispatcher Clearance to do so, since radio transmission encounters a "dead spot" at the area in question.

APPROVED AND FORWARDED:
NATIONAL UNION
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Thus, the Organization submits, Claimant was not in a position to obtain supervisor clearance on January 19, 1984 to exceed his assigned territory and instead relied on a Train Dispatcher's clearance.

Furthermore, the Organization points out that Claimant's actions did not impede rail service in the area in dispute. Thus, it asserts, any error on Claimant's part was unintentional and did not negatively impact Carrier's operations. Therefore, it submits that Claimant should not have been disciplined for his actions on January 19, 1984.

Carrier argues that Claimant exceeded his Track and Time Permit by .7 of a mile. In Carrier's view, this action constitutes serious misconduct since any train operator would not know of Claimant's whereabouts had a train passed the area. The result, Carrier insists, could likely have been serious injury or death to Claimant.

Furthermore, Carrier notes that Claimant was discharged in 1977 for similar infractions only to be reinstated later. Therefore, it insists, Claimant has been put on notice that future misconduct could lead to his discharge. Carrier argues that it applied progressive discipline under the fact of this case. Accordingly, it asks that the claim be rejected in its entirety.

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A review of the record convinces the Board that Claimant's discharge is unjustified. While it is clear that Claimant exceeded his assigned limit on January 19, 1984, he did so inadvertently. He did not deliberately seek to evade his responsibilities as a Track Inspector. Furthermore, we note that Claimant had been assigned to the territory in question for only four days prior to this incident. Therefore, his unfamiliarity with the territory was understandable, even though he did violate Carrier's Track and Time Permit.

Under these circumstances, a two year suspension, from February 13, 1984 to February 13, 1986, is justified. Thereafter, Claimant is to be made whole for any lost wages or benefits. This suspension reminds Claimant of the seriousness of his misconduct. On the other hand, it takes into account the mitigating circumstances discussed above. In addition, we note that Claimant has already been restored to service, thus reducing Carrier's liability to some extent. Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in this 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;

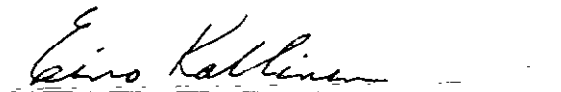
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

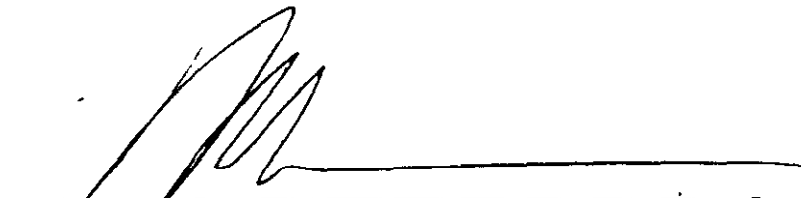
That the Agreement was violated.

AWARD:

Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

July 31, 1990