

RECEIVED-DENVER
LABOR RELATIONS

SEPT 18 89 PUBLIC LAW BOARD NO. 4104

PARTIES TO DISPUTE:	DWKI
	EJK
	RJS
	CJA

Case No. 35

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

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

1. The ten (10) days suspension imposed upon Machine Operator G.J. Longo for 'alleged violation of Rule 570 of Burlington Northern Safety Rules and General Rules 'was unwarranted and in violation of the Agreement. (System File WE/Gr DMWA 85-4-24A).

2. Claimant G.J. Longo's record shall be cleared at the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF THE BOARD: This dispute concerns a ten day suspension assessed by Carrier against Claimant, Machine Operator G.J. Longo. On October 9, 1984 Claimant was assigned hours 7:30 a.m. to 4:00 p.m. but did not report for work until 7:42 a.m. An investigation was held in absentia and Claimant was found guilty of the charges.

The Organization contends that Carrier did not afford Claimant a fair and impartial investigation as required by Rule 40 of the Agreement. First, the Organization argues that Claimant was not given a five (5) day advance notice of the investigation as required in Rule 40(c). It alleges that the notice was given to and signed by Jerry Longo and not Gerald J. Longo and that a comparison of the signatures reveals such.

Second, the Organization asserts that Claimant had permission to be off on October 10, 11 and 12, 1984 and was on vacation October 15th thru 26, 1984 returning to his permanent assignment on October 29, 1984. Accordingly, it argues that the notice should not have

been delivered on his day off and that the investigation should not have been scheduled during his vacation.

Thus, the Organization reasons that Carrier did not afford Claimant his due process rights to attend the investigation. Therefore, the Organization asks that the claim be sustained on procedural grounds alone.

As to the merits, the Organization asserts that testimony of Roadmaster Jackson states that he was merely going to make a note of Claimant's lateness on that morning. It notes that Claimant was then released by Roadmaster Jackson to return to his regular assignment. In the Organization's view, a 10 day suspension is disproportionate to Claimant's lateness that morning. Accordingly, the Organization 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 the Agreement here. First, Carrier contends that the investigation notice was properly sent to Claimant's last known address, which he had provided. The certified return receipt was then signed by Claimant's father. It asserts that he was appropriately notified of the investigation. Second, Carrier maintains that there is no rule that requires delivery of the notice and the subsequent hearing to be handled on an employee's regular work day. Hence, it argues that Claimant could have requested a postponement until he returned from his vacation; which he did not attempt to do. Accordingly, Carrier maintains that Claimant was afforded a fair

and impartial investigation as required by Rule 40 of the Agreement.

As to the merits of the claim, Carrier points out that Claimant did not report for duty at the designated time nor did he offer any explanation as to why he was late for work. Additionally, it notes that he was not given permission to have the remainder of the day off on October 9, 1984. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged. Moreover, it points out that Claimant had been disciplined for the same offense less than one year earlier. In light of this previous discipline, Carrier insists that a ten day suspension is appropriate here. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

After reviewing the record evidence, we are convinced that the procedural arguments must fail. This is so for a number of reasons. First, it is the considered opinion of this Board that Claimant was properly notified to attend the investigation October 22, 1984. The Carrier's obligation is considered sufficient when the notice is sent by certified mail to the Claimant's last known address. In this case, the notice was sent and signed by Claimant's father. Carrier can not be held liable for failure of his father to give Claimant the letter. In the judgment of the Board, we conclude such as proper notification. Second, we do not believe that there exists any requirement that the notice be mailed and/or the hearing be held on Claimant's work day. Claimant and/or his representative could have appropriately requested a

postponement but chose not to do so. The hearing was then properly held on the date originally scheduled. Thus, we conclude that Carrier afforded Claimant a full and fair investigation.

As to the merits of the claim, the record evidence is clear that Claimant was late on October 9, 1984 and did not give reason for his lateness. In fact, by his position as a Machine Operator, he prevented the rest of his gang from starting work because of his lateness. It is a clear obligation of an employee to report on time and work his scheduled assigned hours, absent sufficient reason for any lateness. No evidence was presented that would support Claimant's lateness that morning. Accordingly, we are persuaded that the ten day suspension is an appropriate penalty and the claim must be denied.

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

9/5/59