

RECEIVED-DENVER  
LABOR RELATIONS

SEP 18 89 PUBLIC LAW BOARD NO. 4104

		10WK	
		10WK	
PARTIES TO DISPUTE		10WK	
		10WK	
		10WK	
		10WK	
		10WK	
		10WK	

Case No. 36

Brotherhood of Maintenance of Way  
Employees

vs.

Burlington Northern Railroad

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

1. The disciplinary demotion of Section Foreman J.D. Newman and the forty-five (45) days suspension imposed upon him for alleged 'violation of Rule 14B of the Maintenance of Way Department' was unwarranted and without just and sufficient cause.

2. Mr. J.D. Newman shall be reinstated as a section foreman with seniority as such unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF THE BOARD: Claimant, on September 27, 1984 was a Section Foreman on Gang No. 2 working in and around the Prescott, Wisconsin area. On that date, an eastbound train proceeded through the limits of Farm Y Order No. 304 at normal speed without permission from Claimant to do so. An investigation of the incident was held on October 8, 1984. Claimant was found guilty of his failure to properly display track flags and was assessed a forty-five day suspension and restriction to positions other than foreman.

The Organization appealed the suspension. Carrier denied the appeal. The claim is now before this Board for adjudication.

The Organization asserts that Claimant instructed his machine operators to begin maintenance work on their machines. Since the machines did not perform work or occupy either the eastbound or westbound main line tracks, it argues that Claimant determined

it unnecessary to erect the flag on the westbound track until they actually occupied that track. It asserts that such decision made by Claimant conforms to the normal and customary procedure. It further maintains that the suspension and demotion assessed by Carrier constitutes dual discipline which is clearly excessive under these particular circumstances. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, insists that it was justified in the discipline of Claimant. It asserts that Claimant admitted at the hearing that he did not have the proper track flags displayed at the west end of Form Y Order No. 304. It asserts that the defense of the Organization that the practice Claimant has been working under for 8 years must be denied. The Organization maintains that the fact that he has been improperly displaying flags for 8 years does not make such practice correct. The failure to properly display the track flags endangers the safety of employees and equipment. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged.

Moreover, Carrier points out that Claimant had been involved in a similar incident eighteen months prior to this case. In that case, he was suspended for fifteen days and had his foreman's seniority restricted for six months. In light of this record, Carrier insists that the discipline imposed here is appropriate. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

It is the Board's conclusion that the record of evidence

supports a finding of guilt. The testimony of Claimant revealed that he did not have the proper track flags displayed. Whether or not he had followed the same practice for a number of years is immaterial. The incident in question is a clear violation of Carrier rules regarding safety. In the position of foreman, Claimant is held responsible for the safety of the gang and the work equipment.

As to the discipline assessed, the Board concludes that the penalty was excessive. Under these circumstances, a forty five day suspension is justified. To the extent that his demotion as a Section Foreman was permanent, it should be modified. As of the date of this Award, the restriction is removed from Claimant's record. The discipline of suspension and demotion reminds Claimant of his obligation to adhere to all safety rules.

Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in this Opinion.

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

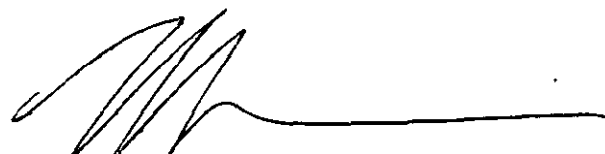
That the Agreement was not violated.

AWARD:

Claim sustained to the extent indicated in the Opinion.

  
P. Swanson, Employee Member

  
E. Kallinen, Carrier Member

  
Martin F. Scheinman, Neutral Member

9/5/89