

PUBLIC LAW BOARD NO. 4104

Case No. 49

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 five (5) days of suspension imposed upon Track Foreman R.L. Wolfe for alleged violation of Rules 570 and 576 in connection with his alleged '...failure to devote yourself exclusively to the service of the Company and your alleged failure to comply with instructions from proper authority by allegedly taking your lunch period prior to the assigned period about 11:00 a.m. on June 30, 1985...' was unwarranted, without just and sufficient cause and on the basis of unproven charges. (System File 9 Gr. 10 DI - R.L. Wolfe)

2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This dispute concerns a five day suspension assessed by Carrier against Section Foreman R.L. Wolfe. On June 30, 1985, Claimant was instructed to take his crew to repair track that was damaged in a derailment. Claimant was observed, with his crew, sitting in a truck eating from 10:50 a.m. to 11:15 a.m.

As a result of this incident, Carrier conducted an investigation on July 29, 1985 to determine Claimant's responsibility in connection with his alleged failure to devote himself exclusively to the service of the Company and his alleged failure to comply with instructions by taking his lunch period prior to the assigned period of 12:00 Noon to 12:30 p.m. On August 14, 1985 Claimant was notified that he was assessed a five day suspension.

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 gang to "take a break from the heat" at approximately 11:00 a.m. for a 15 minute period. It contends that the crew was engaged in strenuous manual labor and Claimant exercised supervisory judgment when he instructed the gang to take a break. The Organization argues that the break was not for a 25 minute period, as the Carrier alleges, but for 15 minutes. Thus, in the Organization's view, it is clear that Claimant and his crew did not observe their lunch period prior to the designated time of 12:00 Noon but merely took a brief period of time to refresh themselves. It concludes that Claimant acted in a prudent manner ensuring the safety of his crew. Finally, the Organization points out that the testimony of Carrier witness, Roadmaster Jackson, is unsubstantiated and cannot be relied upon. For all of the foregoing reasons, it asks that the claim be sustained.

Carrier, on the other hand, contends that the testimony of Roadmaster Jackson is conclusive in that he observed Claimant and his gang for 25 minutes sitting in the truck and eating. Carrier concludes that such a period of time was excessive for a break. It asserts that the gang would have taken the "break" for a period longer than 25 minutes had Mr. Jackson not approached Claimant. Under such circumstances, Carrier argues that it properly found Claimant guilty as charged. Accordingly, it asks that the claim be denied.

A review of the entire transcript convinces us that the claim must fail. Claimant, in his role as a Foreman, is responsible for

the actions of his crew during the course of the workday. It is not Claimant's decision to take breaks as he desires and thus absent himself and his gang from their duties. On the date in question the credible evidence establishes that Claimant's crew was sitting in the truck and eating for 25 minutes. Thus, the record is clear that Claimant is guilty as charged. The penalty assessed is not excessive. Accordingly, and for the foregoing reasons, the claim is 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

9/4/90