

PUBLIC LAW BOARD NO. 4104

Case No. 50

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 (ten days of suspension and removal of foreman and assistant foreman seniority) imposed upon Claimant R.L. Wolfe for alleged violation of Rule 570 was arbitrary, capricious, unwarranted, without just and sufficient cause and on abuse of the Carrier's discretion.

2. The Claimant's seniority as foreman and assistant foreman shall be restored and unimpaired, his record shall be cleared of the charge leveled against him, he shall be compensated for all wage loss suffered during his suspension and he shall be allowed the difference between what he would have received as foreman and what he was paid in a lower rated position during his disqualification period."

OPINION OF BOARD: Claimant, Foreman R.L. Wolfe, was assigned to Maintenance Gang 943 headquartered at Denver, Colorado. At 7:30 a.m. on July 17, 1985, Claimant was assigned duties of correcting FRA defects. At 8:00 a.m., Claimant was seen at the Globeville office filling out a This Way Up form. At 10:00 a.m., Roadmaster Jackson was informed by Claimant's gang that he had been there for a minute and left. At 12:00 p.m., Claimant was observed again at the Globeville office still completing forms.

As a result of the circumstances on that date, Claimant was instructed to attend an investigation on July 29, 1985 for his "...alleged failure to comply with proper instructions...when instructed to take his gang to the New Shop area...." On August 14, 1985, Claimant was notified that he was suspended from service for ten days August 22, 1985 through August 31, 1985. Additionally, Claimant was advised that his seniority as foreman

and assistant foreman was removed.

The Organization appealed the discipline assessed Claimant. 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's imposition of discipline was improper. It asserts that Claimant's four hour absence from duty on July 17, 1985 was related to his attempt to speak to a counselor of the Employee Assistance Program. It maintains that the testimony of Roadmaster Jackson reveals that he did not take exception to Claimant's presence at the Globeville office at 8:00 a.m. The Organization asserts that if there was an objection to Claimant at the office, Roadmaster Jackson should have acted at that time. It further contends that Claimant made the necessary arrangements with Track Inspector Torres to supervise the crew during his period of absence in order to ensure that the work was completed as instructed. In the Organization's view, Claimant exercised his judgment by ensuring that his gang had proper supervision before he made arrangements to see his counselor. It maintains that Claimant should not be disciplined for his attempts to correct his personal problems by use of Carrier's Employee Assistance Program. The Organization asks that Claimant's record be cleared of all reference to this matter and that he be compensated for all wages he lost.

Carrier, on the other hand, asserts that if Claimant needed to complete a "This Way Up" form, one would have been provided for

him at a time that didn't interfere with his duties. Additionally, it avers that if Claimant had advised his supervisor that he needed to contact a counselor, arrangements would have been made to schedule an appointment. Carrier maintains that, instead, Claimant took it upon himself to spend four hours away from his assigned duties without permission. It contends that the testimony of Claimant himself clearly establishes that he did not receive permission to leave his assigned work area. As such, Carrier argues that Claimant failed to comply with his supervisor's instructions justifying the imposition of the penalty imposed.

The transcript established, without any doubt, that Claimant failed to comply with the instructions on July 17, 1985. While the Board recognizes the importance of the privacy rights of Claimant in seeking assistance from the Employee Assistance Program, an employee still is obligated to indicate that he requires time off even if not specifically stating who he was to see. Claimant's failure to adhere this principle subjects him to disciplinary measures.

However, under these surrounding circumstances, it is evident that Claimant did make arrangements for a responsible individual to supervise the gang during his absence. For the foregoing reasons, the discipline imposed was excessive. Indeed, the suspension shall be reduced to a five day suspension and Claimant may accrue foreman seniority as of January 1, 1989. Accordingly, the claim is sustained to the extent indicated in the 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 this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/4/90