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PUBLIC LAW BOARD NO. 4104

B.M.W.E.

Case No. 67

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 imposed, consecutive suspensions of five (5) and ten (10) days, on Claimant D.J. Christiansen for alleged violations of Rules 502 and 502(B) of the Rules of the Maintenance of Way Department was on the basis of unproven charges and in violation of the Agreement.

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: Claimant, D.J. Christiansen, was employed as a B&B Mechanic at LaCrosse, Wisconsin when the dispute arose. This case involves two disciplinary suspensions, 1) a five day suspension for being absent from work without proper authority on September 26, 1985 and 2) a ten day suspension for failure to report to duty on October 4, 1985.

The Organization appealed both suspensions of Claimant. Carrier denied the appeals. Thereafter, they were handled in the usual manner on the property. They are now before this Board for adjudication.

The Organization contends that Carrier violated Rule 40(c) which requires that five days notice must be given the employee prior to an investigation. It asserts that with respect to the investigation held on October 9, 1985, the notice was not received by Claimant until October 7, 1985, only two days before the hearing. Thus, it concludes that Carrier violated Rule 40(c) of the Agreement and asks that the claim be sustained on procedural

grounds.

As to the merits, the Organization maintains that Claimant marked off duty on both dates by calling his foreman prior to the start of his shift. However, it asserts that the foreman was not present to receive Claimant's calls and a message and return calling number were left. The Organization disputes the allegation by Carrier that a return phone call was made on each date with no answer. It argues that Carrier did not provide any such evidence to prove the allegation. Accordingly, it asks that the claim be sustained on its merits as well as procedural grounds.

Carrier, on the other hand, denies that the Agreement was violated. It asserts that Carrier offered to postpone the hearing for an extension of time if either Claimant or his representative required additional time. It contends that both Claimant and his representative indicated that they would proceed with the investigation. Thus, in Carrier's view, Rule 40(c) was not violated. As to the merits, Carrier asserts that Claimant alluded to a doctor's appointment on September 26, 1985 but could not provide any medical documentation. Carrier argues that the fact remains that Claimant did not "obtain authority" for his absences. Although he did call and leave a number where he could be reached, Carrier argues that there was no answer at the number on both dates. For the foregoing reasons, it asks that the claims be denied in their entirety.

A review of the record evidence reveals that Claimant was accorded due process. The record indicates that Claimant was

present and represented at the investigation. Claimant and his representative were given the opportunity to request a postponement, but declined. There is no support for the Organization's allegation that Claimant's rights were violated.

As to the merits, the transcript establishes that Claimant did not obtain proper authority for his absence. Although he left a message with a Carrier official, such does not adhere to specific instructions he has received from his supervisor on previous occasions. The Board finds that there was sufficient evidence adduced to support Carrier's conclusions as to Claimant's guilt. However, due to the fact that both claims involve the same offense only days apart, it is determined that the penalty for both offenses should be consistent. As such, Claimant's discipline shall consist of two (2) five (5) day suspensions. Accordingly, 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 violated.

AWARD: Claim sustained to the extent indicated in the Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

1 / 2 / 91