

PUBLIC LAW BOARD NO. 4104

Case No. 73

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 fifteen (15) days of suspension imposed upon Machine Operator T.D. Dalrymple for alleged violations of Rules 43 and 50 and Maintenance of Way Department Rule 532B was arbitrary, capricious and without just and sufficient cause.

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 was assigned as a Machine Operator at Canton, Illinois working under the supervision of Roadmaster A.R. Jacobs. On May 14, 1986 Claimant was observed by Jacobs for not wearing his hard hat.

As a result of the above observation by Jacobs, Claimant was directed to appear for investigation on June 5, 1986 for his "...alleged failure to comply with the instructions regarding the wearing of a hard hat and proper care of Company equipment..." As a result of the investigation, Claimant was assessed a fifteen day suspension.

The Organization appealed Carrier's suspension of 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 the rules regarding hard hats are not applicable in this case. It asserts that Claimant was on his assigned lunch period and not in the area that hazardous work

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was being conducted. Additionally, it maintains that there were other employees in the area not wearing their hard hats, but Claimant was the only employee disciplined. As such, it argues that Claimant received disparate treatment since he was singled out. In the Organization's view, a fifteen day suspension is excessive and asks that the claim be sustained.

Carrier, on the other hand, contends that the proper use and care of safety equipment is of major importance. It asserts that Claimant's excuse for failing to wear his hard hat because he was on lunch is not valid. It argues that he was in an area where other employees were working and therefore must comply with the instructions regarding use of safety equipment. It maintains that Claimant failed to follow the instructions of Jacobs when he failed to wear his hard hat. As such, Carrier argues that Claimant was guilty of the charges justifying the imposition of a fifteen day suspension.

The transcript establishes without any doubt, that Claimant failed to follow the instructions of Jacobs. While Claimant alleges that he did not have to wear his hard hat while on lunch, the fact remains that he was obligated to obey a supervisors instructions. There is no doubt that a proper work-related instruction was given by Jacobs but that Claimant chose to invoke self-help by refusing to comply with the instruction. Claimant was in a work area where hazardous conditions exist and therefore must follow the established procedures, regardless of his interpretation of such rules. An employee must comply with directed instructions

and then pursue the established grievance procedure if they believe the instructions to be in error.

We hold, therefore, that Carrier acted properly under the circumstances present in this case and deny the claim.

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

5/28/91