

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 27
)	
vs)	Award No. 24
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The Organization presents a claim on behalf of David C. Lippert that he receive eight hours' straight time rate in compensation at this Water Service rate of pay for each work day he was off work because of unjust suspension levied by the Carrier.
2. Relief requested by the Organization is also that Mr. Lippert's record be cleared of any reference to the investigation and discipline he received because of the investigation.

FINDINGS

The Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged absence from duty without proper authority. After the investigation was held the Carrier notified the Claimant that he had been found guilty as charged and he was assessed a thirty (30) day suspension. This suspension was appealed by the Organization up to and including the highest Carrier officer designated to hear such before this case was docketed before this Public Law Board for final adjudication.

Regular hours for covering the assignment held by the Claimant who held position of Water Service Helper was 7:30 AM to 4:00 PM with one half hour off for lunch. On the day in question the Claimant was off work without permission from 7:30 to 8:15 AM

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at which latter time he called supervision advising that he would be late for his shift. The Claimant was subsequently advised to report to work for just the afternoon of the shift, at 12:30 PM.

According to testimony by the B&B Supervisor in Minneapolis he explicitly advised the members of the Water Crew that they could not lay off except for a bona fide reason because the crews could "not work shorthanded". The policy outlined was that if a member of the Crew had to take time off they "were to call the Foreman before...starting time". (Emphasis added) This policy was outlined to the crew members just the day before the Claimant called in 45 minutes late, and evidence shows that the Claimant was present when the policy was explained to crew members. Further, in his own testimony at the investigation the Claimant admits that he did not report to work at 7:30 on the day in question, and that he did not have authority to be absent from work.

The Rules at bar read as follows, in pertinent part:

Rule 570

Employees must report for duty at the designated time and place. They must be alert, attentive, devote themselves exclusively to Company service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority.

Rule 576

Employees must comply with instructions from proper authority....

During the investigation is queried by the Carrier officer conducting the investigation in the following manner.

Q. "Do you understand that Rule (570)?"

A. "Yes, I do".

.....

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Q. "The rule states that employees must report for duty at the designated time and place---did you report at the designated time?"

A. "No, I didn't."

.....


Q. "Rule 576 states employees must comply with instructions from proper authority....(D)id you comply with those instructions on September 9th?"

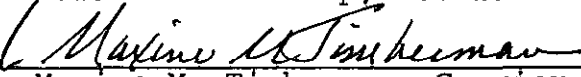
A. "Not completely, no."


According to the Claimant he did not comply with the instructions because he overslept. He overslept because he knocked his alarm clock over during the night and it malfunctioned. It is also his testimony that he had trouble sleeping because of an on-the-job injury received the day before. The Board must note, however, that although the Claimant testifies about this injury he had not reported it to either the B&B Supervisor nor the Water Service Foreman prior to the time he overslept and the Board must conclude that this remains an undefensible argument for oversleeping. The Board must also note that even if the argument was defensible, arbitral forums have consistently rejected oversleeping, in itself, as defense for employees not showing up to cover their assignment at the proper time, and that Boardssuch as this have routinely sustained Carrier's right, furthermore, to discharge employees for such infractions. (See for example, on this property, the conclusions of Public Law Board 2746, Award 15; and Public Law Board 3460, Award 6). On the record as a whole, the Board must conclude that the instant claim before it cannot be sustained and that the Claimant is guilty of the rule infractions, as charged.

AWARD

The claim is denied.


Edward L. Suntrup, Neutral Member


Maxine M. Timberman, Carrier Member


Bruce G. Glover, Employee Member

Date: _____