PUBLIC LAW BOARD NO. 4225

Claimant - W. H. Bishop
Award No. 4

Case No. 4

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes and Union Pacific Railroad

STATEMENT OF CLAIM:

That the Carrier's decision to suspend Claimant from its service from May 8, 1989 through June 4, 1989 was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

According to the Carrier the Claimant failed to call-in to report his absence on May 1, and 3, 1989. He also refused to come to work on May 5, 1989 even though his request to be absent

had been denied and he was given a direct order to report. By charge letter dated May 8, 1989, the Claimant was notified that a formal investigation would be held on May 10, 1989 to determine his responsibility for being absent without authority and for being insubordinate. He was charged with a possible violation of the following General Rules, particularly those parts which read:

> General Rule A: Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service. The service demands the faithful, intelligent and courteous discharge of duty.
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> General Rule B: Employes whose duties are prescribed by these rules must have a copy available for reference while on duty.
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> Employes whose duties are affected by the time table and/or special instructions must have a current copy immediately available for reference while on duty. Employes must be familiar with and obey all rules and instructions and must attend required classes.
>
> If in doubt as to the meaning of any rule or instruction, employes must apply to their supervisor for an explanation.
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> Rules may be issued, cancelled or modified by general order, time table or special instructions.
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> When authorized by superintendent, generral orders or special instructions may be cancelled, modified or issued by train order Form Q or track bulletin.
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> General Rule D: Employes must cooperate and assist in carrying out the rules and instructions, and must promptly report to the proper officer any violation of the rules or instructions, any conditions or practice which may imperil the safety of trains, passengers or employes, and any misconduct or negligence affecting the

interest of the Company.

Rule 600: TO WHOM EMPLOYES REPORT: Employes whose duties are prescribed by these rules will report to and comply with instructions from the superintendent, and such others as may have the proper jurisdiction. They will comply with instructions issued by officers of the various branches of service when applicable to their duties.

Rule 604: DUTY -- REPORTING OR ABSENCE: Employes must report for duty at the designated time and place. They must devote themselves exclusively to the company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

Rule 607: CONDUCT: Employes must not be:
(1) Careless of the safety of themselves or others;
(2) Negligent;
(3) Insubordinate;
(4) Dishonest;
(5) Immoral; or
(6) Quarrelsome.

The Carrier believed the charges were supported by the evidence presented at the hearing and the Claimant was suspended from May 8, 1989 until June 4, 1989.

The Claimant testified that he called to report his absence on the two days in question. However, it is difficult to believe the people receiving his calls would have taken a message on one day and not the other two. The Claimant further urges that the medicine he was taking on May 4, 1989, made him very drowsy and very ill, but, the Foreman testified that the Claimant joked about the effects he was feeling from the medicine. There is also a difference in the interpretation of the conversation between the Claimant and the Track Supervisor,

as well as, an apparent dispute regarding who had knowledge that there would be physical examinations given the next day.

In reviewing these matters, there are several aspects of the Claimant's story which cause the Board concern.

If, as the Claimant contends, he was very affected by the medicine, it is very difficult to understand why he did not raise the issue more forcefully during his shift on May 4. Instead, testimony reveals he worked the entire day and did not make any strong objection when he was assigned to drive the truck for some distance to pick up parts. Furthermore, there is some merit to the Carrier's position that if he had been as affected by the medicine as he claimed, he should have been reluctant to drive home alone, some 200 miles in distance. Especially in light of the fact, that he did not have a scheduled doctor's appointment and from all indications made no attempt to call the doctor during his work day on May 4. If he had, he would have known whether or not he could have received an appointment or whether he could have ceased taking the medication which was causing the side affects. And, according to the Claimant's testimony, he knew which of the medications was causing him difficulty and knew he only had to take it for one more day.

The more important issue in this case centers around the Claimant's refusal to follow an order without attempting to work things out. If he had made the effort to contact the physician or had stopped taking the medicine and still experienced the alleged affects, then this Board would be more receptive to his

argument. As it is, even if the Claimant's contentions were valid on May 4, the evidence indicates that he made no attempt to call his doctor to discuss the affects of the medicine or to prove to his employer the validity of his claims. He made no attempt to alleviate the problems he was experiencing so that he could report to work the next day. He seemed, instead, to be content to ignore the directive from his supervisor.

During the investigation, the Claimant raised the issue that the supervisor failed to tell him he would have access to a doctor the next morning. It would seem the Claimant would have this Board believe that if he had the information it would have made a difference in how he reacted to the directive to report. However, there is sufficient evidence to prove the Claimant was well aware of the pending physical examinations. That being the case, there was no reason for the Claimant not to report the next day and seek the advice of the attending physician(s).

The Claimant has worked for the Carrier since 1974. His employment record is actually fairly good. He had some minor disciplinary incidents, but only one suspension of five days in 1981 for an alleged injury on duty. But, the charge in this case is a serious one. Insubordination is often considered a dischargeable offense. The Board does not view the offense lightly. As we have indicated before, if an employe believes s/he is being treated unfairly, s/he has to resort to filing a claim. S/he cannot take it upon him/herself to resolve the dispute through self-help unless his/her health or safety is in jeopardy. There is no evidence the Claimant was in such a

position. Instead the evidence shows that he willingly disobeyed the directive. The penalty was justified.

AWARD

The Claim is denied.

Carol J. Zamperini
Neutral

Submitted:

August 8, 1989
Denver, Colorado