

PUBLIC LAW BOARD NO. 4244

BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Carrier's decision to suspend Western Region Maintenance of Way employee S. E. Dulmage for 30 days effective February 2, 1995 and place him into Phase 1 of the Progressive Intervention Program was unjust.

Accordingly, Carrier should now be required to expunge the suspension from the claimant's record and compensate him for all wage loss resulting from the 30 day suspension.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute Western Region Maintenance of Way employee S. E. Dulmage (the "Claimant") was notified to attend a formal investigation on December 20, 1994, concerning his alleged negligence when he left his gang unsupervised and failed to maintain a safe working area by allowing the housekeeping conditions to deteriorate, resulting in personal injury to a gang member under his supervision on November 15, 1994, in possible violation of Rules 1.1, 1.1.2, 1.6 (paragraph 1), 1.15 and 50.1 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on January 10, 1995. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules. He was then issued a Level 5 supervision of thirty days and was required to participate in a Progressive Intervention Program.

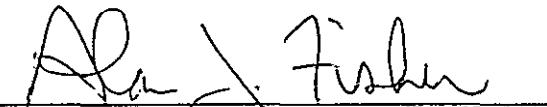
In summary, on November 15, 1994, the Claimant was working as a foreman. He issued instructions to his gang and then left the work site with two members of the gang to obtain proper safety footwear for them. While absent from the work site, another gang member suffered a reportable hand injury. As a result of the injury, the Carrier conducted an investigation and a re-enactment of the accident. After the re-enactment the Carrier, then scheduled a formal investigation in this matter.

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After reviewing the record it is the Board's opinion that the Carrier failed to meet its burden of proof. Although the Carrier argued that the Claimant was responsible for the housekeeping conditions, which contributed to an employee's injury, the Board finds no basis for the Carrier's determination under the circumstances of this case. Accordingly, the claim must be sustained.

AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: 8/19/96