

PUBLIC LAW BOARD NO. 4244

Award No. 226

Case No. 235

File No. 180-13N1-982.EXP

Parties to Dispute:

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**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

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BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to issue a Level 3 suspension of 20 days [from service] for Western Region, S. E. Dulmage was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held 2:00 p.m., March 25, 1998 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

On March 2, 1998, the claimant, track supervisor S. E. Dulmage, was notified by the Carrier to attend a formal investigation regarding his alleged hy-railing outside of track and time limits on February 19, 1998. As a result of the investigation held on March 25, 1998, the claimant received a level 3 suspension of 20 days for violating Rules 6.3.1 and 10.3(c) of the Maintenance of Way Operating Rules (MWOR). The Board finds that the evidence of record supports this decision for the following reasons.

The following Rules of the MWOR are applicable to the Board's decision in this case.

Rule 6.3.1 of the MWOR, "Main Track and Controlled Sidings," provides, in relevant part:

Authority. On a main track or controlled siding, authority is required when:
On-track equipment is on or foul of the track. Off-track equipment is used to foul the track. Or work is performed on or foul of the track.

Types of Authority. When required, the following types of authority may be used:

1. Restricted limits
2. Block register territory
3. Track permit
4. Track and Time
5. Train location lineup
6. Track-car operator lineup
7. Track warrant
8. Track bulletin Form B
9. Occupancy control system


Rule 10.3(c) of the MWOR, "Releasing Track and Time," provides:

Releasing Authority. Employees and equipment must be clear of the limits before the employee granted track and time releases the authority. Only the employee who received track and time can release it. An employee releasing track and time must state the following: The employee's name. The track and time number being released. The track limits being released. The time the track and time limits were cleared.

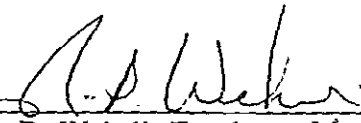
The investigation reveals that there was a flash flood warning in effect during the time of the dispute at issue. The claimant received four separate authorities of track and time in order to patrol his section of the track. In his testimony, the claimant admitted to releasing his track and time while still occupying those track limits. (Tr. 17,18). The claimant realized his mistake while in the detector section at Eastern Avenue when he discovered that the set out switch was lined against his movement. Thus, the Carrier has satisfied its burden of proof that the claimant released his track and time prematurely and continued to occupy the north main track between Bandini and Eastern Avenue. Additionally, the Board finds that the claimant could have taken an alternative course of action and placed the track out of service if the claimant believed that he was fatigued. The claim presented must be denied.

AWARD

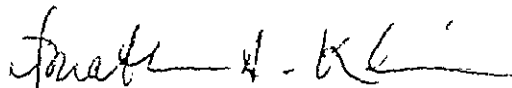
The claim is denied.



Thomas M. Rohling, Carrier Member



R. B. Wehrli, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 7th day of October, 1998.