

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: The discipline (30 demerits) assessed Extra Gang Foreman G. E. Turner for alleged violation of various company rules as indicated in Mr. B. L. Watkins' letter of March 21, 1988 was arbitrary, capricious and unwarranted. The claimant's record shall be cleared of the discipline referred to in Part I hereof.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified by letter dated February 9, 1988 that the Carrier was assessing him thirty demerits and charging him with failure to call in time for his gang from February 1, 1988 to and including February 7, 1988. The Carrier advised that such constituted a violation of General Rules A, B, D and 1511 as found in Maintenance of Way Rules effective April 5, 1987 and General Rules A, B, D, 600 and 607 as found in Safety, Radio and General Rules for All Employees, revised April, 1985.

By the same letter the claimant was notified that if he rejected the discipline, a hearing would be scheduled for 2:30 p.m. on February 29, 1988 in Los Angeles, California. The claimant rejected the discipline proposed, and a formal investigation was held March 2, 1988 to determine his responsibility, if any, concerning his failure to call time in for the gang over which he was acting foreman on a daily basis from February 1 up to and including February 7, 1988.

Pursuant to the investigation the claimant was found guilty and was assessed thirty demerits.

The transcript contains 42 pages of testimony. The Board has studied the testimony of record, as well as the exhibits submitted by the parties.

The claimant was temporary foreman during the week of February 1 to February 8, 1988. The regular foreman was absent. The claimant failed to call in the time of Gang 7866 as required.

W. S. Oakden, the claimant's immediate supervisor, testified that he told the claimant he was required to call in on February 3, 1988. There is a great deal of concern by the Union that the Foreman might be required to call in during their off duty hours. The evidence reveals that this is one of the requirements made of a foreman.

Mr. Rollin Woods, Manager of Track Maintenance, testified that he approached the claimant on February 4 and advise him: "Griff, you gotta get this time called in because the whole gang, you know, this whole gang is holding up on it and we've got to get it in." He stated that the claimant said: "Okay, I'll get it in."

The evidence reveals that the claimant failed to get the report in and regular Foreman, Monty Garreans, returned on February 8 and had to turn the time in.

Normally this would certainly justify discipline. However, the evidence establishes that Steve Sowa had missed calling in for five days and received a first warning on the Maintenance of Way mobile-tel.

G. S. Mang also testified that Mr. Sowa did not call the time in and after the tenth day he finally called it in because Mr. Billy Oakden verbally told Steve Sowa he must call the time in, and it is past approval hours, and these guys aren't going to get paid for the two weeks, the previous two weeks, so Sowa was on his second time.

Mr. Oakden testified that Steve Sowa did go five days without calling in and that he gave him a warning that the time must be called in. He also testified that he gave Mr. Sowa a second warning.

Under the circumstances this constitutes disparate assessment of discipline in that one employee received a warning for five days, and a second warning for another five days of not calling in. More severe discipline may be assessed an employees if he has a poorer discipline record than another employee. Such evidence does not exist herein.

If the Employer wishes to assess more serious discipline the employees involved must be advised that although the discipline has been light previously, more severe discipline will be issued in the future.

Under the circumstances herein the discipline will be set aside and the claimant will be issued a verbal warning.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days of the date of this award.

DATED: May 31, 1988

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Preston J. Moore, Chairman


Union Member


Carrier Member