

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

1. The discipline (30 day suspension) assessed Bridge Welder J. J. Williams for alleged violation of various company rules as indicated in Mr. D. D. Tholen's letter of March 20, 1989, file 8910305 was arbitrary, capricious and totally unwarranted.

2. The claimant's record shall be cleared of the discipline referred to in Part (1) hereof, and he shall be compensated for all time lost.

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 to attend an investigation in Sidney, Nebraska on March 2, 1989. The claimant was charged with stopping at a road crossing near Colton, Nebraska and being slumped over in the truck seat in a reclined position with his eyes closed. Pursuant to the investigation the claimant was found guilty of sleeping and was assessed a thirty day suspension.

Richard D. Frenzen, Steel Erection Bridge Welder, testified that he, the claimant and Willie Deuerlein were in the back of the dog house. The dog house is a separate compartment behind the cab of the truck. He stated the claimant's eyes were closed and that he was in a reclining position.

Richard S. Lamb, B&B Foreman, testified that the claimant worked under his supervision. He stated that on the morning of November 14 he parked at the first crossing west of Colton on the Union Pacific mainline and observed the welders' truck coming up from Julesburg where their outfits are parked.

This witness testified that they pulled over, Tom Long, Ray -- Rick Cooper got out of the front of the truck and were proceeding to take a look at a bridge which was right down from the crossing. He testified that he noticed the three gentlemen with them never got out, so he went over to talk with them.

Foreman Lamb testified that when he approached on the side where the claimant was seated in the crew cab, he noticed through the window that the claimant was reclined and his eyes were closed. He stated that he walked around to the other side of the truck, which was the side where Mr. Deuerlein was sitting, opened the door and started conversing with all three gentlemen.

Mr. Lamb stated that he was not specifically talking to anyone in particular, but he was talking loud enough to make sure claimant would hear and hopefully would open his eyes and sit up a little bit to acknowledge that he was there. He testified he talked to them for a good minute and a half, and he called across to the claimant and asked if he was alright.

Foreman Lamb stated there was no reaction, and he asked claimant if there was any problem, and at that time the claimant opened his eyes, and he then asked the claimant if there was a reason why he was in that position. He testified the claimant told him his tail bone bothered him, and in the course of the conversation, claimant was advised that if that was the problem, arrangements could be made to have it looked at and possibly getting some time off to take care of it. He also testified that at that time there was no comment, or at least nothing that he could decipher.

The Union contends that Mr. Cooper and Mr. Long should have been witnesses at the investigation. Mr. Lamb had testified they were not there when he had the talk with the three gentlemen in the back of the cab.

Mr. Deuerlein testified that when Mr. Lamb pulled up, the three men got out of the cab and walked down to a bridge. He also testified that Mr. Lamb came up to the left side of the truck, and he thought he saw the claimant in a reclining position.

This witness also testified that when Mr. Lamb came over to our side, he was acting normal and making normal conversation; he was talking loud enough. He testified he did not remember what all of the conversation was about, but Mr. Lamb was trying to get a response from the claimant but did not get one for quite a while. He stated he could not tell whether the claimant had his eyes closed.

The claimant denied all of the charges made against him. He stated he acknowledged Mr. Lamb's presence and his opening of the door. He stated there were no questions asked of him, and no orders were given to him. He testified he was sitting upright, tilted to one side of the dog house.

The claimant also stated that he had been verbally abused by Mr. Lamb. He testified that Mr. Lamb threatened him and made a long statement regarding him and that he was not going to be around

much longer. He testified this statement was made about November 14. That statement, therefore, will have no effect on the decision in this case.

The Union has alleged that the time limits were violated by the Carrier when the hearing was held 79 days after the occurrence. Rule 48 states that when discipline is rejected, Carrier shall have no less than 15 calendar days from date of receipt of rejection in which to schedule and conduct the hearing, and hearings held outside the 30 day calendar day referred to above shall not be a violation of this rule.

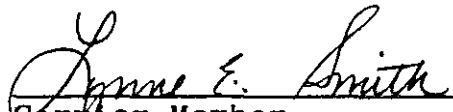
Therefore, there is no violation of the time limits. After carefully reviewing and studying the testimony of record, it is the opinion of the Board that the Carrier had sufficient evidence to justify the discipline assessed.

AWARD: Claim denied.

Dated: July 14, 1989.


Preston J. Moore, Chairman


Organization Member


Carrier Member