

Joseph Lazar, Referee

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
BURLINGTON NORTHERN RAILROAD COMPANY

Claim of C. L. Jones for reinstatement to service, with payment for all time lost beginning August 5, 1986 until reinstated to the service of the Carrier, with all rights intact and that the charge be removed from his service record.

FINDINGS: The Board, on consideration of the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated April 10, 1987, that it has jurisdiction of the parties and the subject matter, and that, pursuant to the Agreement dated April 10, 1987, oral hearing by the parties, including Claimant, has been duly waived.

"Arrange to report to Division Office, 5280 Shelby Drive, Memphis, Tennessee at 9:00 A.M. Tuesday, September 23, 1986 for investigation to develop the facts and determine your responsibility, if any, in connection with your alleged failure to comply with instructions from your Foreman, Mr. D. R. Elliott, when on August 5, 1986 you allegedly did not perform your assigned task of tightening brace bolts on Bridge 26.2 near Imperial, MO in a safe and proper manner as shown to you by B&B Foreman Elliott."

Under date of September 29, 1986, Claimant was informed "that as the result of the investigation conducted by General Supervisor B&B

J. L. Cox on September 23, 1986, which you failed to attend, your dismissal from service by B&B Foreman D. R. Elliott on August 5, 1986 is upheld.

"Said investigation clearly showed violation of Rule 532B of the Burlington Northern Rules of the Maintenance of Way Department."

Rule 532B of the Burlington Northern Rules of the Maintenance of Way Department reads:

"Instructions: Employees must comply with instructions from the proper authority."

The transcript of investigation shows the following testimony of B&B Foreman D. R. Elliott:

"Q. Mr. Elliott were any members of your gang wearing any safety apparatus while working on bridge 26.2 on August 5, 1986?

A. Yes I had instructed the men to wear their safety belts and lanyard.

Q. You had instructed them to wear them and use them?

A. And fasten them when they were tightening up bolts, yes sir.

Q. How many men were instructed to wear these belts?

A. Two.

Q. And who were they?

A. L. D. Jennings and C. L. Jones.

Q. Mr. Elliott why did you instruct these men to use safety belts with lanyards?

A. In case a wrench would slip off of a nut that they wouldn't lose their balance and fall.

Q. Strictly for safety reasons?

A. Yes sir.

Q. Then had this..... you feel you feel had they got over-balanced, the wrench slipped unexpectedly or they might have fell to the ground, hitting other piling or braces causing personal injury

A. Yes sir that is very possible.

Q. Mr. Elliott I think you stated already, you instructed Mr. Jones to use his belt and lanyard?

A. Yes sir I did.

Q. Did he ask any questions about how to fasten it or anything?

- A. No sir and as a matter of fact I gave him instructions on how to do it where he would be most comfortable and so did L. D. Jennings.
- Q. Describe what those instructions were? Where was he to fasten this belt?
- A. The belt goes around your waist and it has a length of nylon line with it that goes around the piling. I instructed him that if he would push it down further on his hips that it could possibly be more comfortable to him. Also, Mr. Jennings instructed him along the same line as he's had previous experience working for a cable television climbing poles.
- Q. Mr. Jones did put the belt on?
- A. Yes sir he put the belt on.
- Q. Did you at any time observe him fastening the lanyard in the way that you had instructed him to?
- A. Occasionally but it was a full time job being sure that he fastened the belt each time. There was no problem in wearing the belt, the problem that we had was that he would not hook his lanyard around the piling which made the belt useless unless it's hooked up.
- Q. Are you saying that when you were not right near him or within sight that he would take this lanyard a loose and not do as you had shown him?
- A. Yes sir that's exactly what I am saying.
- Q. How many times would you say this happened?
- A. I told him at least a half a dozen times to get the belt hooked and to keep the lanyard hooked and keep it hooked.
- Q. What time of day did this start?
- A. This started at 9 o'clock in the morning and progressed to somewhere in the neighborhood of 1320.
- Q. And what happened at 1320?
- A. At 1320 we were making very little progress. Prior to this time, I had got down underneath the bridge on several different occasions but I went down there and stayed to see what was going on and he was walking around in behind the piling and hanging on with one hand and trying to tighten up with the other hand. And at this time I instructed him to stand one foot on one girt brace and one foot on the other girt brace, face the bolt, lock his lanyard to the piling and use two hands to tighten up the bolts.

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Q. Why do you feel Mr. Jones used one hand to hang on instead of fastening his safety belt?

A. It is my opinion that Mr. Jones is afraid to work on bridges, that he is afraid of height.

Q. Have you ever questioned him about his fear of height?

A. Yes.

Q. Mr. Elliott what time during the day did you first notice Mr. Jones not properly using safety belt?

A. Oh probably around 10:30 in the morning.

Q. What did you say to him at that time?

A. I instructed him that the safety belt wouldn't do him no good if he didn't hook it up, that he oughta.....that for him to hook it up.

Q. What was Mr. Jones' response?

A. He hooked it up on the piling.

Q. Then, later you saw him with it not hooked to the piling?

A. Yes sir.

Q. And holding to the piling with one hand?

A. Yes sir.

Q. And did you again instruct him to fasten the lanyard around the piling?

A. Yes sir I did.

Q. What did he do at that time?

A. He hooked it up.

Q. And did he have it unhooked later on when he should have had it hooked up?

A. Yes sir.

Q. And you again instructed him to follow instructions?

A. Yes sir I did.

Q. Did Mr. Jones ask you any questions about safety belt use?

A. No sir.

Q. And as foreman of the gang you have, you feel you have the responsibility, primary responsibility for the overall safety of your men?

A. Yes sir I do.

Q. Mr. Elliott what type weather on August the 5th '86, I mean sunny, cloudy, was it rainy or what?

A. Yes sir, it was a clear day, the sun shining." Tr., pp. 5-7).

"Q. Did you and Mr. Jones have a conversation as to why he wouldn't tighten his lanyard.... or fasten it?

A. He didn't like using a lanyard because he was afraid that if he fell or did fall, that would hurt him sure enough that away.

Q. Was Mr. Jones getting the bolts tight enough with one hand?

A. No sir.

Q. Did you check them after he tightened them?

A. Yes I did." (Tr., p. 8).

"Q. You stated earlier you felt part of his problem or a big part of his problem was being scared of height. How long have you felt that Mr. Jones was scared of height?

A. I felt this way from the time that Charlie had come to my gang as a top rate man and I have a record on file stating that also.

Q. How long has he been in your gang as a first class man?

A. I think, to the best of my knowledge, he has been on my gang approximately three years, two to three years.

Q. Then you dismissed Mr. Jones for repeated failure to comply with your instructions is that right?

A. Yes." (Tr., p. 10).

The transcript of investigation shows the following testimony of Mr. L. D. Jennings, co-worker with Claimant:

"Q. Alright. While standing on the gird braces tightening from them how high above the ground would you say they are?

A. I would say probably about 14 feet approximately.

Q. Alright and you were standing on them, you didn't use a scaffold board or a hanging scaffold or anything?

A. No sir.

Q. Mr. Jennings were you required to wear and use a safety belt with lanyard on that day?

A. Yes sir.

Q. Who instructed you?

A. D. R. Elliott the foreman.

Q. Who else in the gang was instructed?

A. C. L. Jones.

Q. Did you see Mr. Jones wearing this belt?

A. Yes sir.

Q. Did you see him use it properly at any time?

A. Yes sir off and on when he was told.

Q. But only when he was told?

A. Yes sir.

Q. He would....would he take this belt off before he continued..... before he finished tightening the bolt he was on at that time or just failed to hook it back up like....

A. He failed to hook it back up when he moved from one piling to the next.

Q. Did you hear Mr. Elliott, foreman Elliott mention this to him more than one time?

A. Yes sir.

Q. How many times would you say during that period?

A. In rough figures, I would say at least a half dozen times." (Tr., pp. 11-12).

"Q. And you state that he has to, when he is working off the ground, he holds on with one hand?

A. Yes sir.

Q. In your own words, why, your own feeling about.....why does he hold on with one hand?

A. Underneath the bridge working with hand....he's scared. When he has his belt on with the safety belt around the piling, he still hangs on with one hand.

Q. He is scared at any height off the ground is that right?

A. Yes sir. I would say so." (Tr., p. 14).

The evidence of record is clear beyond any doubt that Claimant failed to hook up his safety belt when he moved from one piling to the next, and used only one hand with the wrench while holding on to

piling with the other hand. The tightening with only one hand was not satisfactory and could possibly result in an unsafe bridge with dangerous consequences.

The evidence of record has substantial probative evidence in support of the Carrier's determination that Claimant violated Rule 532B of the Burlington Northern Rules of the Maintenance of Way Department. Dismissal for such violation is not excessive discipline. In the instant case, however, the evidence of record is clear that Claimant C. L. Jones had a known fear of working on high bridges, distrusting even the safety belt and lanyard. In the circumstances of this particular case, Claimant should be reinstated, but without pay for time lost.

A W A R D

Claim disposed of per Findings.

Joseph Lazar
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: September 28, 1987