PUBLIC LAW BOARD No. 4381: CASE No. 28

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF THE CLAIM

1. The ten (10) day suspension of Machine Operator G.K. Stluka ... for violation of General Rule 'A' of the Rules of the Maintenance of Way Department, Operating Department and Rule 271 of special instructions by not clearing CTC Permit No. 7 on time issued to you on January 31, 1986.' is excessive and without merit on the basis of unproven charges (System File B-Y-304/BMWB 86-5-7C).

2. Claimant shall be exonerated by clearing his record of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS OF THE BOARD

On January 31, 1986, the Claimant, Mr. G.K. Stluka was issued a CTC Track Permit to operate his snow clearing machine between the hours of 9:20 A.M. and 4:01 P.M. Mr. Stluka completed his work at approximately 3:30 P.M., but he did not clear his track and time permit with the control operator. Mr. Stluka was located by the control operator at 9:50 P.M., at which time the permit was cleared. As a result of this sequence of events, a train was delayed between 6:10 P.M. on January 31 and 3:01 A.M. on February 1, 1986. Subsequently, Mr. Stluka was charged with allegedly failing to report clear on the permit, and was issued a ten (10) days suspension.

Before moving to the merits of this case, certain procedural issues must be decided. The investigating officer was not obligated to sequester witnesses, as requested by the Organization's representative. However in denying that request, the investigating officer took the risk that the credibility of witnesses could be called into question. However, upon a reading of the record we find no basis to conclude that the testimony of witnesses was tainted or that the failure to sequester witnesses prejudiced Mr. Stluka. Additionally, we find no basis in the record to conclude that the investigating officer harassed or threatened the Claimant. We find that Mr. Stluka was provided a fair and impartial hearing.

As to the central issue, we find that Mr. Stluka knew or should have known that he was obligated to notify the control operator when he was clear of the permit's limits. The week before this incident, Mr. Stluka had cleared such permits on three (3) occasions. Moreover, during the

afternoon of January 31st, Mr. Stluka acknowledged to a co-worker that the permit needed to be cleared.

The discipline in this matter was assessed in a reasonable and routine manner ... the suspension started on the day after the date of the letter assessing the discipline and continued for ten (10) consecutive calendar days. Mr. Stluka chose to exercise his seniority for a position that necessitated a considerable commute between his home and his work location. There is no basis in the record to conclude that the Carrier intentionally sought to exacerbate the impact of the discipline.

Finally, the Organization has not convincingly argued that the ten (10) days suspension is excessive or harsh. In the absence of such a showing, this Board will not set aside the discipline assigned by the Carrier.

AWARD

Claim denied.

Ronald L. Miller
Chairman and Neutral Member

Maxine Timberman
Carrier Member

Bruce G. Glover
Organization Member

16 Sept 1988
Date