

PUBLIC LAW BOARD NO. 4402

PARTIES     )     BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO            )  
DISPUTE     )     BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1.     The thirty (30) days' suspension imposed upon Machine Operator G. Valencia for alleged "... violation of Rule 351 of the Burlington Northern Railroad Rules of the Maintenance of Way for his failure to insure that machine BNX 54-0092 was operated within the limits specified in Track and Time Permit #11 on July 31, 1986" was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File #1 Gr./GMWA 86-12-22A).
2.     The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

As a result of charges dated August 1, 1986, investigation held on August 12, 1986 and by letter dated September 10, 1986, Claimant, a machine operator since 1975, was suspended for 30 days for violating Rule 351 by failing to insure that his machine operated within track and time permit limits on July 31, 1986.

On July 31, 1986 Claimant, Welder R. D. Brawner and Foreman S. A. Wilhelm were instructed to move Tamper BNX-54-0092 from Downers Grove to Cicero for use in the departure yard. Claimant operated the machine, Brawner obtained the track and time permits and functioned as a pilot and Wilhelm was in charge of the movement. The end of the relevant track and time permit was the west absolute signal at Highlands. When the end of the limit of that permit was reached, Claimant did not stop the tamper but continued beyond the limit by approximately 200 feet. Claimant then returned the tamper to a point within the designated limit.

While Claimant received a 30 day suspension, Brawner received a letter of censure and Wilhelm was not disciplined.

We find substantial evidence in the record to support the Carrier's conclusion that Claimant violated the track and time permit as charged. The record establishes that Claimant operated the tamper beyond the designated limit. In doing so, Claimant violated the permit.


However, we find that the amount of discipline imposed was arbitrary. First, we note that another employee in charge of obtaining the permit and functioning as a pilot received only a censure and the foreman in charge of the movement received no discipline. Second, we note that although Claimant should have known where to stop the tamper, the record demonstrates an element of confusion concerning the given instructions. Specifically, the record shows that the instructions given to Claimant may not have been sufficiently precise concerning the specific location of the end of the permit in relation to the signal bridge. We shall therefore reduce the suspension to a censure and Claimant shall be compensated accordingly.

**AWARD**

Claim sustained in part. The 30 day suspension shall be reduced to a censure and Claimant shall be compensated accordingly.

  
Edwin H. Benn  
Neutral Member

  
E. J. Kallinen  
Carrier Member

  
P. S. Swanson  
Organization Member

Denver, Colorado  
August 11, 1989