

PUBLIC LAW BOARD NO. 5418

Case No. 21 Award No. 21

PARTIES Brotherhood of Maintenance of Way Employees
to - and -
DISPUTE: Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of a 22 day suspension
imposed on Wayne Miele on November 17, 1997.

FINDINGS: Subsequent to a hearing held on November 10, 1997,
claimant was found guilty of insubordination, in that he did not
follow the orders given by Engineer of Track, John Bubencik to
report to the Nashua NH crew on October 9, 1997.

This dispute centers on conflicting statements. In the
testimony of Mr. Bubencik he states that on October 8, 1997, the
work location of the crew in which the claimant was a member was
changed. The Foreman in charge of the gang was unable to contact
the claimant to inform him of the change of work location. On
October 9, 1997, the claimant reported to his assigned work
site and realized that no one was coming, so he contacted the
Radio Room and spoke to Mr. LaMontagne who told him that Mr.
Bubencik said that he was to go to Nashua and work with the
local track crew. Mr. Bubencik said that approximately one
hour later the claimant called him and said that no one was
at Nashua. Mr. Bubencik said he told the claimant to contact
the Radio Room and have Mr. Larkin pick him up. Later while
hi-railing, Mr. Bubencik said they stopped at Nashua Yard at
approximately 12:15 PM where he found the claimant and asked
him if he had contacted the Radio Room to arrange to be picked
up by Mr. Larkin as he previously instructed. He said the

claimant responded by saying "No I didn't, I thought everything was set up". Mr. Bubencik subsequently removed the claimant from service.

The claimant's testimony covered the same sequence of events, except that his version of his conversation with Mr. Bubencik is different. The claimant stated that after he spoke to Mr. Bubencik and informed him of the situation at Nashua, Mr. Bubencik said that "its been arranged", whereupon claimant said that "its been arranged that someone is going to pick me up whether it was the I & R crew or the maintenance crew". Claimant said that he waited at the work site for about 45 minutes and when no one came to pick him up he called the Radio Room several times but was unable to get through.

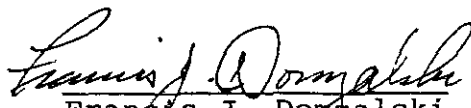
After a thorough review of the hearing transcript, we do not draw the same conclusion as the Carrier, as we do not find the claimant's conduct in this matter as being insubordinate. Based on the sequence of events, it is apparent in our view that there was a genuine misunderstanding surrounding the instructions given. Therefore, we find that the Carrier has failed to meet its burden of proof in this case. Hence, the discipline is to be removed from the claimant's service record and he shall be paid at the straight time rate for all work days lost as a result of the suspension.


AWARD: Claim sustained in accordance with the Findings.

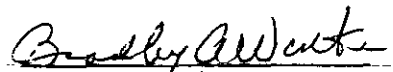
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Francis J. Domzalski
Neutral Member


T. W. Mc Nulty
Carrier Member


B. A. Winter
Organization Member

Dated: 12-18-98