

BURLINGTON NORTHERN RAILROAD

PARTIES

TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. R. E. McGowan was unjustly suspended for thirty days beginning February 17, 1995, and ending March 19, 1995, for his alleged responsibility for not providing protection for maintenance of way equipment he was in charge of and for his allegedly releasing his crew and leaving before the end of the shift on February 16, 1995, without proper authority.
- (2) As a consequence of the Carrier's violation referred to above, Claimant should be paid for all time lost and the discipline shall be removed from his record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, an employee with 17 years service, had his Foreman's qualifications revoked and was suspended for thirty days for releasing his crew three hours early without permission on February 16, 1995 and leaving his brush cutter machine unattended and unprotected on that date. He was charged with violating Operating Rules 1.15 (leaving assignment without proper authority), 20.1 and 20.3.1 (dealing with a Foreman's responsibility to maintain equipment and economically use labor), and 6.57.2 - Protection, which is reprinted below:

Rule 6.57.2

When on-track equipment is stored on other than a main track or controlled siding, all switches that provide direct access to the track must be:

- Lined against movement.
- Spiked, clamped, or locked with an effective locking device.
- Properly tagged.

When unable to line switches away, on-track equipment must be protected as outlined in Rule 15.4.....

The March 7, 1995 investigation reveals that Claimant and his crew were working a ten hour shift on the Mansfield team track on February 16, commencing at 7:00 a.m. and ending at 5:30 p.m. Claimant testified that since his crew's start time is supposed to begin at the motel nearest the job location, but they had actually begun at 7:00 a.m. at the job site during that week, he felt that they had make-up time coming to them. It was his understanding that he did not need to get prior approval to take make-up time, but his three superiors testified that a Foreman had to obtain authorization to leave early, and that Claimant had not requested

authorization, nor had they given it to him, on February 16. The supervisors admitted having given authorization to other crews to leave early when they could not get track and time at the end of the day or to take make-up time on occasion.

The record reveals that Claimant gave up his track and time at 12:28 p.m. on February 16, and that he left his brush cutter locked up with the south switch tagged out of service at around 2:00 p.m., while leaving the north end switch not tagged out, and neither a derail nor red flag up protecting his machine. Roadmaster Larry Prichard testified that while it is permitted to take only one end of a siding out of service, the other end must be protected by a portable derail and red flag. Claimant stated that since he had permission to occupy the south end of the track from the CSA agent, he assumed that the agent took the track out of service, and that it was sufficient to lock up the south side to protect his equipment.

Initially when confronted on February 21 about leaving work early with his crew on February 16, Claimant stated that he had contacted the CSA agent about tying up his equipment, and left work around 3:00 p.m. He also noted that he contacted the dispatcher when he got home after 6:00 p.m. to make sure the track was taken out of service. At the hearing Claimant testified that he had trouble getting track and time that afternoon, despite attempting, unsuccessfully, to call the dispatcher numerous times from both his machine radio and telephone. He admitted releasing his crew early for make-up time owed at the start of their shifts without advising his supervisor.

The record reflects that Claimant never told his supervisors on February 21 that he had trouble getting track and time, or contacting the

dispatcher on February 16. It appears that other employees working in his area were successful in getting track and time up until 5:40 p.m. that day. Track supervisor Kenny Stafford testified that when he discovered the unattended brush cutter during the afternoon of February 16, he assumed the track had been taken out of service, but later discovered that it hadn't when he phoned the dispatcher at 5:20 p.m. Stafford admitted using CSA agents to take tracks out of service in the past, but noted that at the time Foremen had been instructed to deal directly with the dispatcher to do so. Claimant had only been a Foreman for 6 months at the time of this incident.

The Carrier argues that Claimant violated very important rules when he released his crew early without authorization and failed to provide for the protection of his expensive equipment, both important functions of a Foreman. It contends that the discipline assessed was warranted when considering Claimant's prior record.

The Organization argues that Claimant did not violate any rules, since he followed normal procedure in securing and protecting the brush cutter on the south end while getting authorization from the CSA to take the track out of service. It notes that Claimant's release of his crew early at the end of their work week on make-up time was common practice, and did not routinely require specific supervisory approval. The Organization contends that the penalty of loss of his Foreman's qualifications and a lengthy suspension is excessive.

After full consideration of all of the facts, this Board is of the opinion that there is substantial evidence in the record to support Carrier's conclusion that Claimant violated the cited rules on February 16, 1995.

Despite Claimant's assumption that the CSA agent would take the track out of service, it was his responsibility to assure that his equipment was properly protected before leaving on February 16, 1995. He did not follow through with contacting the dispatcher and confirming that the track was taken out of service until over 4 hours after he left his machine on the south end of the siding. The fact that Claimant felt it necessary to make contact with the dispatcher after hours lends credence to the conclusion that he was unsure of whether his equipment had been properly protected by the track being taken out of service previously. It was supervisor Stafford who actually instructed the dispatcher to take the track out of service on February 16, 1995, not Claimant or the CSA agent. Further, prior to the investigation, Claimant did not state that he had any problems getting through to the dispatcher.

However, on the record before us, it appears that Claimant had the understanding that he was entitled to let his crew leave early on its last work day to make-up time they had put in at the beginning of their shifts that week, without seeking specific approval on February 16. While his supervisors admitted granting such approval when requested by other crew foremen, and it being common practice to let crews go early when they cannot get any track and time, it appears that Claimant's understanding was misplaced and that he should have sought prior approval, or at the very least notified his supervisor, of his intention. In this case, Claimant's error appears to have been one more of form, than of substance, since his crew would have likely received permission to leave early if they had make-up time coming. Carrier, herein, has not claimed nor proven that the gravamen of Claimant's release of this crew early was anything other than the fact that he failed to get approval from his

supervisor to do so.

Under such circumstances, and considering that the last of Claimant's disciplinary suspensions (10 days) was almost six years prior, the Board is of the opinion that the penalty assessed in this case is excessive and unduly harsh and that it should be reduced to a 15 day suspension. However, we conclude that it was an appropriate exercise of Carrier's discretion to revoke Claimant's Foreman's qualifications for his rule violations in this case.

AWARD:

The claim is granted, in part. Carrier is directed to reduce Claimant's suspension from 30 to 15 days, and to pay him for the time lost in excess of that duration.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Thomas M. Rohling
Carrier Member

E. R. Spears
Employee Member

Fort Worth, Texas
February , 1997

