

PUBLIC LAW BOARD NO. 8860

Award No. 188
Case No. 188

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

**(The Burlington Northern Santa Fe Railroad (Former
(AT&SF Railway Company)**

STATEMENT OF CLAIM:

1. That the Carrier's decision to Suspend Welder Rick G. Smith from service for thirty days was unjust.
2. That the Carrier now reinstate Claimant Smith with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held at 2:00 p.m. on October 25, 2001 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

The Carrier was doing some crossing repair work. It had a crew work nights with

Claimant and his assistant ordered to start their day at 0400 to relieve the night crew.

The Roadmaster found it necessary to change the order of business and attempted from 0400 until 0530 to contact Claimant, finally catching him at a gas station. Claimant was to bring four thermite kits with him which were back at his starting point. Shortly after receiving his instructions, the lights on Claimant's truck went out.

The Roadmaster contacted him to find out the problem, and when advised about the lights, instructed Claimant to call him every 15 minutes.

Within 30 minutes of being advised about the lights, the Roadmaster located Claimant and his truck and commenced to troubleshoot the light problem which turned out to be fuses.

While in the driver's seat of Claimant's truck, the Roadmaster discovered the log book was not up to date. Missing were entries for October 5, 6, 7 and 8, 2001. The Roadmaster asked Claimant if he had been keeping the log book up to date. Claimant, instead of simply saying no, at first said "No, I'm not doing that right now."

When asked again if he was filling out the log book every day, Claimant responded by saying "No, I'm not answering you and I'm not going to."

When asked the third time, Claimant responded by saying, "You're looking at it, Tony. What do you think?"

Then Claimant said he was being harassed, then he got out of the truck whereupon the Roadmaster asked if he was refusing to help and answer questions.

The Roadmaster then told Claimant to go home and return at his regular starting time, whereupon Claimant allegedly said "I'm going home and I may or may not come back."

Claimant then allegedly went to the side of the truck to open up the cabinet and the Roadmaster became concerned by Claimant's demeanor and told Claimant to just go home and pulled him out of service pending the outcome of an investigation.

The Roadmaster's testimony used various adjectives at various times during his testimony such as, "I don't know if he was being sarcastic" when Claimant replied about to the instructions of keeping the Roadmaster advised of their status while working on the defective lighting by saying, "I'll put on a stopwatch and call every 15 minutes."

At another point, the Roadmaster testified, "He used some vulgarities, so I was kind of under the impression that he was already irritated."

When Claimant was looking for the fuses and responding somewhat to the inquiry of filling out the log book, the Roadmaster said he threw everything back into the glove compartment and, "he seemed more irritated."

When the Roadmaster pulled him out of service pending an investigation, Claimant was charged with being insubordinate and quarrelsome. These two charges can and have, in other cases, a definite effect on the employee's work record calling for a long suspension or a termination, but in this case, Claimant was assessed a 30 day actual of which he was advised in a letter dated November 6, 2001, that the 30th day of suspension was to be November 6 and he was to report on November 7, 2001.

Claimant and his working partner present a different account of the incident leading to Claimant's suspension and discipline. Both based the hostility on the Roadmaster and that Claimant did nothing to provoke the reaction.

Just reading the written words of who said what does not convey irritation or hostility, particularly when what was said was not in any way threatening or derogatory.

Claimant's attitude was somewhat flippant and did approach the response one would expect from a teenager accused of raiding the cookie jar. Then again, the Roadmaster's insistence upon Claimant responding to his question, "Do you fill out your log book daily" when he was looking at it and knew that it had not been done is somewhat strange.

Also brought forward in the investigation was a meeting held on October 10, 2001, to discuss Claimant's suspension, attended by the Roadmaster who suspended Claimant, the Division Engineer, Claimant and the other member of his crew and a Track Supervisor who was testifying regarding the follow-up meeting.

The Track Supervisor stated that during the meeting nothing was said of Claimant being quarrelsome, about Claimant refusing to answer questions, or about the log book, which seems rather odd. If the Roadmaster was that upset by Claimant's actions, you would have thought that he would have laid it out for the Division Engineer.

The only charge established clearly by the Carrier was Claimant's failure to keep an up-to-date log book. All the other charges have not been substantiated by sufficient evidence of wrong doing.

A 30 day actual suspension is not commiserate with the offense. Claimant's record reflects two commendations, one in 1994 and the other earlier in 1997. Then in the latter part of 1997, a formal reprimand when he waived his rights to an investigation for his failure to protect men and equipment.

Under the circumstances here, Claimant's discipline is reduced to a formal reprimand for his failure to keep up to date on his log book. He is to be reimbursed for time lost as provided in the Schedule Agreement.

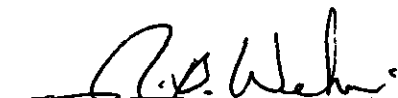
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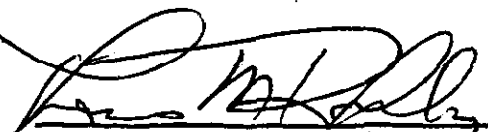
Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehril, Labor Member


Thomas M. Rohling, Carrier Member

Dated: March 6, 2002