

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 2

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(Burlington Northern Santa Fe Railway (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when dismissing Mr. C. W. Hamrick from service for allegedly failing to comply with the instructions of his supervisor and alleged insubordination on September 30, 1995.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record.

FINDINGS

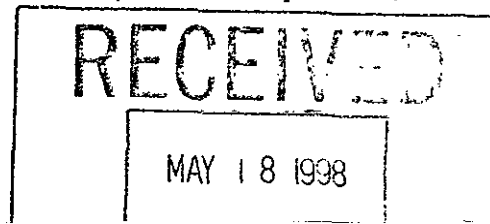
Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this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

On Saturday, September 30, 1995, Claimant was working as a Trackman Driver with MW-3 extra gang to finish a road crossing. Claimant's gang consisted of himself, his Foreman and one other.

The second gang also working on the project consisted of four Trackmen without a Foreman. There was also a Senior Foreman who everyone recognized and respected as the Assistant Roadmaster even though that was not his title. In essence, this Senior Foreman was the man in charge.

About 2:00 PM, after all the concrete had been poured and finished, a member of the four man gang approached the acting Assistant Roadmaster requesting permission for some of the crew to return to home base. The acting Assistant Roadmaster allowed the four man crew to leave.

Claimant asked his Foreman for permission to leave, and at this juncture, the story line



differs. Suffice to say, Claimant got in the truck and drove away when the other four Trackmen left.

Claimant was immediately terminated from Carrier's service and following the requested investigation, Carrier affirmed its decision to terminate Claimant's services for insubordination when he left the job site contrary to the instructions of his Foreman that he was to stay and work.

During the investigation, it was clearly established that after he had asked his Foreman's permission to leave when the others (who had permission to leave) left, that the Foreman told him he was to stay and work.

Claimant's defense was that when he asked the Foreman's permission, the only part of the response he heard was you volunteered to work, and Claimant stated that he told the Foreman that he was volunteering to leave early with the others. Even though Claimant may not have understood fully his Foreman's response, he said he had the permission of the man in charge of the project to leave.

This, however, is contrary to what the Acting Roadmaster, the man in charge, testified to. He denied granting Claimant permission to leave.

This Board, after reviewing the transcript and the on-property correspondence, finds that the Carrier introduced sufficient credible evidence of Claimant's culpability for the charges assessed. Claimant simply walked off the job before the work was done contrary to instructions to stay at work.

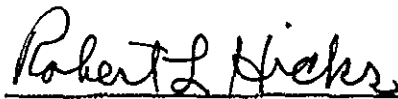
Insubordination is a label that is attached to many scenarios, and the discipline assessed in many instances is severe. This incident is not the blatant in-your-face refusal to do as instructed, but rather an incident of ignoring the instructions and perhaps because he did want to leave early, he heard only what he wanted to hear. Claimant's work record was clear of any other incidents of discipline. He has been away from the Carrier since October 2, 1995. Under the circumstances, he is reinstated to service with all of his seniority rights intact, but without any pay for time lost.

AWARD

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 postmark date the Award is transmitted to the parties.



Robert L. Hicks, Neutral Member & Chairman
Public Law Board 6103

Dated: