

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case **18/Award 18**

Statement of Claim

1. That the discipline of a fifteen (15) day suspension imposed on Laborer T. L. Bauer for violation of Maintenance of Way Operating Rules 1.15, 1.13 and 1.6 in connection with absence without proper authority on May 2, 1995 was arbitrary, capricious, excessive and in violation of the Agreement.

2. As a consequence of the violation the Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

Background

The Claimant was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged absenting himself from work without authority while assigned to work as a laborer on Construction Gang 02 in Lincoln, Nebraska. After an investigation into this matter was held the Claimant was advised that he was being suspended from service of the Burlington Northern Railroad for fifteen days for violation of Rules 1.13, 1.15 and 1.6 of the Maintenance of Way Operating Rules. This discipline was appealed by the Vice General Chairman with the Division Superintendent. This appeal was denied. The claim was subsequently appealed up to and including the highest Carrier **officer** designated to hear such. Absent settlement

of the claim on property it was docketed before this Board for final adjudication.

Procedural Ruling

The Organization alleges, in this case, that the Claimant's due process rights were violated because he was charged with one rule violation but assessed discipline for another. A review of the letter of charge shows that the Claimant was requested to attend an investigation over allegedly absenting himself from work without authority. No rule is cited. After the investigation was conducted he was assessed discipline for violating Rules 1.13 and 1.15. Both of these Rules, which will be cited later in this Award, for the record, properly deal with reporting for duty and with complying with instructions. Reporting for duty can reasonably be subsumed under the latter. However, the Claimant was also found guilty of violating Rule 1.6 which deals with conduct. While the Carrier's **officers** may have found the reasons for his absence improper --- Claimant was, in fact, incarcerated --- the Board can but observe that the Claimant, as the Organization argues, was never charged with improper conduct. The Claimant ought not to have been found guilty of a violation with which he had not been charged. The objection raised by the Organization is, therefore, denied in part and sustained in part. All references to a Rule 1.6 violation will be ignored by the Board in this case.

Discussion

On merits, the Rules involved in this case are the following.

Rule 1.13

Employees will report to and comply with instructions **from** supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

Rule 1.15

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employee must not leave their assignment, exchange duties, or allow others to till their assignment without proper authority.

At the time that he was assessed the discipline under scrutiny in the instant case the Claimant, T. L. Bauer, held assignment as laborer on Construction Gang CG-02. He reported to the Roadmaster who also testified at the investigation.

According to the Claimant the instructions he had been given if he was going to be off work was to call in himself and give the reason for the absence. According to his testimony he had been both verbally advised of these procedures and he was given this policy in writing which included the call-in phone numbers and the call-in time-frame. He states that his understanding was that the person to call was the Foreman. In the absence of this supervisor the Assistant Foreman was to be advised of an impending absence. According to this witness he was off one day in May of 1995 and his girl friend had called in the night before he was off to advise the Foreman of this. She made this call to the Foreman's home. She also called in a second time to advise that the Claimant would

be absent.’

According to testimony at the investigation by the Roadmaster of Gang CG-02 his responsibilities were to oversee the gang, manage the personnel of the gang, plan its activities and order materials. It was his responsibility to grant absences. In his absence, that responsibility was delegated to the Gang Foreman. The Claimant to this case worked directly under the Roadmaster. According to this Roadmaster a written sheet had been handed out to all **BMWE** gang members explaining procedures for call-ins in the event of a pending absence. This sheet also contains phone numbers. It contains the Roadmaster’s work number, his cell phone number, and his home phone number. The sheet also contains the Foreman’s telephone number. In the event that an employee could reach the Roadmaster they were to call the Foreman of the gang. The written procedures outlined in this policy states the following which is cited here for the record:

“When absenting yourself **from** work you are required to contact the roadmaster or foreman in person, or other authorized persons or you will be considered absent without authority”.*

According to the Roadmaster he had personally reviewed the policy in question with the Claimant just about two weeks before the incident occurred with which he is charged in this case. At that time the Claimant was also given a written warning dealing with the proper **manner** in which to mark off work. The Roadmaster testified that he had also

‘Actually, the Claimant **means** to testify that his girlfriend called the Roadmaster **twice**. In the absence of **the** Roadmaster the second person to be called, according to the Roadmaster, was the Foreman.

‘Cited in **Trans.** @ p. 9.

reviewed the procedure with the whole gang shortly before the day of the incident involved in this case. The Roadmaster testified that he had received a first call in early May from a woman who identified herself as the Claimant's **friend**. She told him that she lived with the Claimant, that they had no phone, and that she was calling **from** a pay phone. This woman stated that the Claimant was sick and would not be to work the following work day. According to the Roadmaster he was caught a ".little off guard.. ." by this telephone call since he had never had anyone else call in for an employee with request to be excused. So he just stated: "okay", to the woman caller and hung up the phone. Later the same woman called to make a second request that the Claimant be off. When this happened the Roadmaster testified that he himself then attempted to call the Claimant to explain that he must call in person in order to be excused for laying off. The Roadmaster did call the number he had which was the Claimant's father's phone number. The Claimant's father told the Roadmaster that the Claimant did not have a phone. Since the woman caller told the Roadmaster that the Claimant was ill and the Roadmaster had told her to have the Claimant call him personally and he had not done so the Roadmaster testified that he became suspicious about the Claimant's actual circumstances. He discovered that the Claimant had been incarcerated in the local jail.

Findings

Upon the full record before it the Board concludes that the Claimant knew what the policy was for calling in when he took days off. He had been verbally advised of this

policy and it had been given to him in writing. The Claimant did not follow this policy. He was, therefore, in violation of Rules 1.13 and 1.15. On merits, the claim cannot be sustained.

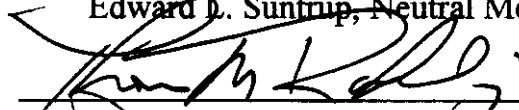
Absent extenuating circumstances the Board must also conclude that the determinations by the Carrier in the instance case were neither arbitrary nor capricious.

Award

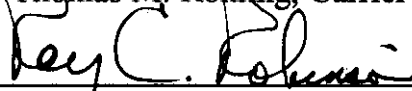
The claim is denied.



Edward D. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: 7/30/01