

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 5/Award 5

Statement of Claim

1. That the Level S thirty (30) day suspension assessed Group 5 Machine Operator D. L. Parks for his alleged failure to comply with instructions on August 6, 1997 was unjust and without sufficient cause.
2. That the Claimant be reimbursed for all time held out of service and that this discipline be removed from his record.

Background

The Claimant was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with alleged failure to comply with instructions issued to him by the Manager of Maintenance Production on August 6, 1997 at approximately 11:00 AM while he was assigned to Group 5 as a Machine Operator, Mobile Gang RP 05 which was temporally headquartered at Thedford, Nebraska. The investigation was held on August 19, 1997 with both the Claimant and any representative in absentia. Thereafter the Claimant was advised by letter on August 5, 1997 and again on August 10, 1997 that he had been suspended from service for thirty (30) days and that he was assigned to a probationary period of three (3) years. According to both of these letters the thirty (30) day suspension was to start on September 14, 1997 and run through October 14, 1997. The Claimant was on medical leave, however, during the month of September, 1997 and thereafter. Therefore, on March 19, 1998 the Claimant was advised by a third letter that

in view of his failure to comply with instructions issued on August 6, 1997 as determined by the investigation held on August 19, 1997 his thirty (30) day suspension had been rescheduled to run from March 23, 1998 through April 22, 1998. This discipline assessed the Claimant was appealed by the Organization and conferenced on property. Absent settlement of the claim it was docketed before this Board for final adjudication.

Discussion & Findings

The Claimant holds seniority date of April 4, 1991 and on August 6, 1997 had established seniority as a Group 5 Machine Operator. The facts of this case are not in dispute. The Claimant called the Assistant Roadmaster on July 30, 1997 and stated to him that he would not be at work on Thursday or Friday, July 31 and August 1, 1997 due to shoulder and back problems he was having. On the following Monday, August 5, 1997 the Claimant left a message with the Assistant Roadmaster's wife with request that the former call him the following morning. The Assistant Roadmaster did so early on the morning of August 6, 1997 and at that time the Claimant requested a leave of absence because, he stated, he had seen a doctor and the latter told him he had problems with the rotor cup in his shoulder and that he should not work. He requested a leave of absence. The Assistant Roadmaster instructed the Claimant to contact the Manager of Maintenance Production. The Claimant did so at about 11:00 AM on August 6, 1997. The Manager asked the Claimant to come to Alliance, Nebraska on August 7, 1997 and report to the Manager's office at 1:00 PM and to fill out a personal injury report. The Claimant was at home in Guernsey, Wyoming which is about 140 miles from Alliance. The Claimant stated that he would do so and asked for directions. The Claimant did not show up at the Manager's office on August 7, 1997 nor did he call to state why he was unable to come. He finally arrived there on August 11,

1997 and filled out the report. On this report the Claimant states that an injury occurred at Broken Bow, Nebraska and he first noticed it on July 22, 1997 and that he was first treated on August 5, 1997. On the report the Claimant states that the injury occurred as result of "...repetitious arm motion..." and that the injury was to his "...rotator cup...".¹

According to testimony at the investigation the Manager of Maintenance Production testified that he and the Assistant Roadmaster waited for several hours for the Claimant to show on August 7, 1997 but he neither showed up nor called. The Assistant Roadmaster had driven some 100 miles to be there also and help fill out the injury report papers and he waited some 4 hours for the Claimant to appear. The Manager testified that when he called the Claimant the next morning to ascertain what happened the latter told him that he had a physical therapy appointment on August 7, 1997 but he could not explain why he had not told the Manager that in the conversation they had the day before.. Nor did the Claimant explain to the Manager, according to the latter, that he was unable to drive albeit the round trip from the Claimant's home to Alliance, Nebraska was a fairly long 240 mile trip.

The rule at bar in this case is Rule 1.13 which states the following in pertinent part:

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.

On basis of the record before it the Board has no other alternative but to conclude that the Claimant violated an order to be in the Manager's office on August 7, 1997 and that such represented an act of insubordination and a violation of Rule 1.13. If there are extenuating

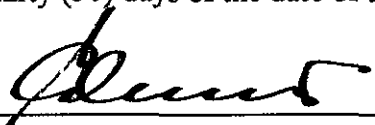
¹Employees' Exhibit A.

circumstances it is that the Claimant did have an injury, as witnessed by his fairly extensive medical leave in the late summer and fall of 1997, and by the fact that he did show up later to fill out the proper papers. Such circumstances do not negate the importance of obeying Rule 1.13, particularly as this relates to injury reports, but it does allow reasonable minds to understand what happened on the days in question and to conclude that there was no apparent premeditation on the part of the Claimant because of the manner in which he acted.

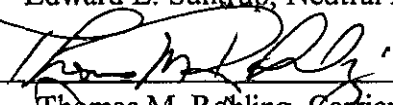
In view of above considerations the Claimant will be found guilty on merits but the quantum of discipline will be reduced to a two (2) day unpaid suspension and the Claimant's personal record shall reflect this accordingly. The Claimant shall be paid by the Carrier for all of the other days he lost, without pay, in March and April of 1998 as a result of the March 19, 1998 notice sent to him by the Division Maintenance Engineer.²

Award

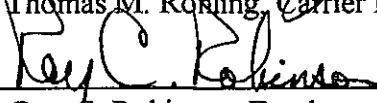
The claim is sustained in accordance with the Findings. All monies owed to the Claimant by the Carrier shall be paid to him within thirty (30) days of the date of this Award.



Edward L. Suntrup, Neutral Member



Thomas M. Rokling, Carrier Member



Roy C. Robinson, Employee Member

Date: December 15, 1999

²Employees' Exhibit C-8.