

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6341

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 3
) Award No. 4
DULUTH, MISSABE AND IRON RANGE RAILROAD COMPANY)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
M. S. Anderson, Carrier Member

Hearing Date: November 16, 2000

STATEMENT OF CLAIM:

1. The five (5) day suspension assessed Track Laborer C. A. Follmer for her alleged failure to follow instructions in a July 26 and 27, 1999 incident was without just and sufficient cause.
2. Track Laborer C. A. Follmer shall now be compensated for the wage loss suffered because of the five (5) daysuspension.

FINDINGS:

Public Law Board No. 6341, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On August 9, 1999, Carrier notified Claimant to report for an investigation on August 20, 1999, concerning her alleged violation of Rules 1, 3, 12, and 13, of the General Rules of Conduct, for allegedly failing to follow her foreman's instructions on July 26-27, 1999. The hearing was held as scheduled. On September 1, 1999, Carrier advised Claimant that she had been found guilty of the charge and had been assessed a five day suspension.

The basic facts are not in dispute. Claimant's headquarters was Proctor, Minnesota. On July 26, 1999, Claimant's acting foreman instructed her to report the following morning at 7:00 a.m. to Two Harbors. Claimant reported instead to Proctor. Subsequently she was called to the office of the Engineer Track and asked why she had not reported to Two Harbors. At that time, Claimant voiced concern over whether she would be paid time and mileage for traveling to Two

Harbors. When assured that she would be, Claimant advised that she would report to Two Harbors. Subsequently, she asserted her right under the Agreement to not use her personal vehicle to go to Two Harbors and asked Carrier to provide transportation, something Carrier ultimately did.


The Organization contends that the acting foreman's instructions to Claimant were incomplete because he failed to advise her that she would be paid time and mileage and failed to tell her that if she did not want to use her personal vehicle, Carrier would provide transportation. The Organization also attacks the directive to report to Two Harbors on the grounds that it was given after the end of Claimant's regular shift, although she was still on duty at the time, working overtime; and that there were employees junior to Claimant at Proctor who should have been assigned to Two Harbors ahead of her.

We do not find the Organization's arguments persuasive. If Claimant was concerned about transportation to Two Harbors, she should have asked supervision at the time of the directive, or, in any event, prior to the following morning. Claimant admitted that she made no effort to contact supervision. She simply failed to report to Two Harbors. Such conduct warrants disciplinary action.

Similarly, if Claimant believed that the directive to report to Two Harbors violated the Agreement, her remedy was to file a claim. This is a classic case to which the maxim, "Obey now, grieve later," applies. Claimant may not engage in self help, i.e. fail to comply with the directive, and escape disciplinary action. Accordingly, we conclude that the claim must be denied.

AWARD

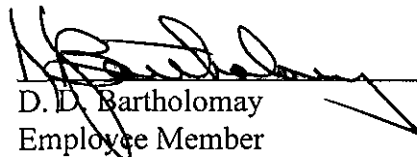
Claim denied.



Martin H. Malin, Chairman



M. S. Anderson
Carrier Member



D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, January 16, 2001