

PUBLIC LAW BOARD NO. 1838

Award No. 42

Carrier File MW-RO-79-5

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: The employees request pay for five (5) days in favor of Claimant O. D. Rickman, account him being suspended from service by letter dated March 9, 1979, signed by Supervisor D. L. Dale.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant a Roadway Machine Operator, exercised his seniority to Backhoe No. 10126 prior to February 20, 1979. He reported, on February 20, 1979, to Section 3 headquarters where said Backhoe machine was located, to qualify thereon, pursuant to Agreement Rule 13 (b) which, in part pertinent here, reads:

"...assignment...to positions of...will be based upon fitness, ability and seniority. Management to be the judge. No employee in charge of a particular type of roadway machine until after he has qualified... Qualification must be at the Roadway Machine Operator's own time and expense."

Terminal Supervisor Dale gave Claimant the keys to start the backhoe machine. However, Claimant could not do so. Said Supervisor concluded therefrom that it would be best for Claimant, in order to operate the machine, to await the presence of a qualified Operator who would instruct Claimant. He thereupon took the keys for the machine back from Claimant. He also told Claimant that he (Claimant) did not know how to operate the backhoe.

Claimant alleged that he remained with the machine the remainder of the day and that he familiarized himself with the machine and its

appurtanences. On advice of his Union Representative, Claimant filed for compensation for February 20, 1979 by entering 8 hours on his time sheet, thereby giving rise to the instant dispute.

Claimant was removed from service March 6, 1979. He was notified under date of March 9, 1979:

"It is indicated on your time sheet for the pay period ending February 27, 1979, that you earned eight (8) hours pay on February 20, 1979, as Operator on Backhoe No. 10126.

Inasmuch as you were not qualified to operate this machine, I informed you on February 20, 1979, that you would be required to qualify on your own time at your own expense. You disregarded my instructions by entering eight (8) hours time on Backhoe No. 11026 on February 20, 1979, for which time you were aware you were not entitled.

In view of information received from conversations with you and your union representative that you might have been ill-advised to enter this time, you are awarded five (5) days actual suspension. However, you are advised that this is a very serious matter and could have resulted in your dismissal. You were removed from service on March 6, 1979, and should report to your assigned job as Helper-Burro Crane No. 14167 at 7:00 AM, March 13, 1979. My office must be advised before this time if for any reason you are unable to report.

s/D. L. Dale"

As per Rule 33 - Discipline and Grievances - a request was made for an investigation and the charge placed again Claimant. Such was granted and after a postponement it was held March 26, 1979.

The instant dispute involves a disciplinary action and not, as here argued by the Employees, a contractual dispute concerning whether Claimant was entitled to qualifying days on the Backhoe Machine under Rule 13(b).

It is clear that Claimant was not entitled under Rule 13(b) to claim time for qualifying on February 20, 1979. He was ill-advised to do so. Whatever complaint he may have had could have been satisfied if he filed a grievance thereon instead of claiming time to which not entitled. This is particularly true when, as here, it was contrary to instructions to not do so.

In the circumstances the discipline is found to be reasonable.

Award: Claim denied.

A. D. Arnett
A. D. Arnett, Employee Member

G. C. Edwards
G. C. Edwards, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member