

AWARD NO. 36

CASE NO. 41

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The 30 day suspension of Mr. C. D. Lyness was without just and sufficient cause and based upon unproven charges.
- "(2) Mr. Lyness now be compensated for all time lost and his record cleared of the charges placed against him."

OPINION OF BOARD:

In February and March, 1977, Claimant was working as a Trackman in a gang on territory supervised by Roadmaster C. T. Terpkosh. Because of an earlier incident involving Claimant's absence from work, he was under special orders to obtain permission to absent himself directly from the Roadmaster or from the Assistant Roadmaster, rather than from his Foreman.

On March 11, 1977, Claimant and a fellow employee, one Shane Snyder, asked their foreman for permission to leave the job. The foreman responded that it was all right with him, so long as they also obtained authorization from Mr. Terpkosh. Claimant telephoned Roadmaster Terpkosh and requested permission to take the afternoon off. Although the record is somewhat in conflict regarding the actual conversation, we are persuaded that Claimant told the Roadmaster in sum or substance that he and Mr. Snyder did not want to work in the rain because they were afraid they might catch a

cold. Roadmaster Terpkosh told the employes that their services were necessary to repair FRA trouble spots, that they should wear their raingear, and that permission to leave was denied. Claimant Lyness verified that permission was denied and asked if the employes would be "in trouble" if they left anyway, to which the Roadmaster responded, "Yes." Thereafter Claimant and Snyder left the job and did not work that afternoon.

Under date of March 14, 1977, Claimant was directed to appear for a hearing on March 17, 1977, into charges reading as follows:

"To determine your responsibility in connection with your actions on March 11, 1977, when you left work without proper authority and against direct orders from your Supervisor, for which you are charged with violation of Rules 7 and 14 of the General Regulations and Safety Rules effective July 1, 1967."

Following the hearing, at which Claimant appeared and was represented, he was assessed thirty days' suspension without pay based upon a finding of guilt and upon consideration of his personnel record. In the present claim we are asked to set aside that discipline on the grounds that Claimant was not guilty of misconduct and that the discipline was excessive.

It is established beyond the need for citation that an employe is required to obey a reasonable order of an authorized superior when given, and he may grieve later if he believes his rights were violated. The single recognized exception to this black letter principle is where the employe's health or safety would be endangered by obedience. On the record before us we find that Carrier has made a prima facie case of direct disobedience of a reasonable order. Claimant has fallen far short of the burden of persuasion to show justification for his insubordination. Whether we measure by objective or subjective standards, he has failed to show that working in the rain with the other members of his gang would have imperiled his health or safety. Clearly he is culpable of misconduct for leaving work not only

without valid permission but in contravention of a direct order. Nor upon consideration of the proven offense and his past record can we find that a thirty-day suspension was arbitrary, unreasonable or capricious. In the circumstances the claim must be denied.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employe involved in this dispute are, respectively, Carrier and Employe within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

Claim denied.



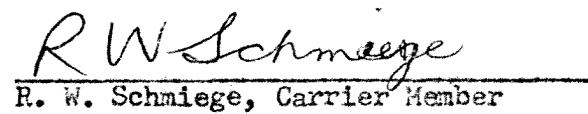
Dana E. Fischen

Dana E. Fischen, Chairman



H. G. Harper

H. G. Harper, Employe Member



R. W. Schmiegel

R. W. Schmiegel, Carrier Member

Date: 12/6/78