

AWARD NO. 63

CASE NO. 77

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 twenty (20) day suspension of Assistant Foreman, M.P. Sherer effective July 31, 1978, was without just and sufficient cause. (D-11-3-279)
- (2) Assistant Foreman Sherer be paid for all time lost and his record be cleared."

OPINION OF BOARD:

Claimant was a Track Gang Foreman working at Missouri Valley under Roadmaster Beemer. Following an incident on June 27, 1978 Claimant was duly notified to attend investigation into the following charge:

"Your responsibility in connection with your failure to report at the derailment site at Kennard, Nebraska, on Tuesday, June 27, 1978, as instructed by Roadmaster S. L. Beemer."

The record shows that at approximately 7:00 PM Roadmaster Beemer was notified of a derailment at Kennard. Claimant and his crew were already working overtime at Missouri Valley. The Roadmaster initially mentioned volunteers to go to the derailment, but when none were forthcoming he ordered Claimant and his crew to go there. Beemer then departed for the derailment and worked there with others but Claimant and his crew never showed up. According to Claimant he did not follow the Roadmaster to the derailment for several reasons: (1) his gang refused to go; (2) he had to stay at Missouri

Valley to finish the work he was doing there; and (3) he received instructions from the Missouri Valley operator to go to West Missouri Valley and he did so, working until 10:30 PM at which time he was too tired to report to Kennard.

We have combed the record with care and we are persuaded that Claimant committed an unjustified act of insubordination in failing to report to the derailment as ordered. His excuses do not stand up to scrutiny and his culpability is not mitigated. Assuming arguendo he received contrary instructions from the operator, those do not supercede the direct orders of the Roadmaster. Additionally, we note that Claimant made no attempt to clarify his instructions if indeed he was in doubt; nor did he attempt to contact the Roadmaster regarding his failure to appear at the derailment as ordered. In the circumstances we find no basis for disturbing the discipline assessed by Carrier.

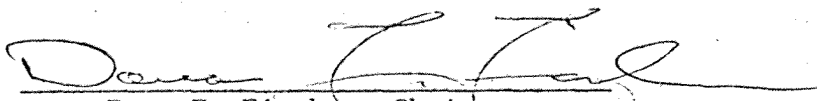
FINDINGS:

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


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee 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. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec. 5, 1979