

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 12

CASE NO. 12

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
BURLINGTON NORTHERN (Former Joint Texas Division)

STATEMENT 1. That the Carrier violated the provisions of the current Agreement when it suspended Machine Operator R. D. Morelock for a period of ten (10) days based on unproven charges, said action being in abuse of discretion.

2. That Claimant now be compensated for all time lost and his record be cleared of all charges.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Machine Operator R. D. Morelock, an employee of this Carrier, with seniority date of February 23, 1976, was notified by letter dated August 20, 1982, "that you are suspended for ten days from the service of the FW&D Railway Company for violation of Rule 570 of the Burlington Northern Safety Rules, in connection with absenting yourself from duty, and from company property, without proper authority, on Friday, June 25, 1982 while employed as machine operator assigned to Rosslyn Section W-102, as evidenced by formal investigation afforded you on Friday, July 23, 1982 at Teague, Texas."

Burlington Northern Safety Rules and General Rules,
Form 15001, Rule 570, reads:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

On Friday, June 25, 1982, Claimant's assigned work hours were from 7:00 A.M. to 3:00 P.M. or to 3:30 P.M. Although there may be some question whether the tour of duty extended to 3:30 P.M., the evidence of record is nonetheless clear that Claimant left the property at Tomball prior to 3:00 P.M. Fellow employee Trackman J. B. Gore, who departed Tomball with Claimant in Claimant's vehicle, testified, in response to the question, "You stated you left Tomball at approximately 2:45 p.m.", "Yes, sir." (Tr., p. 13). Relief Foreman, Mr. T. W. Sikes, testified that after looking for Claimant at Tomball, "I left Tomball at ten to three." (Tr., p. 24). The Relief Foreman further testified, in response to the question, "Had you issued Mr. Morelock...any instructions to the effect that when they delivered the crane to Tomball they were free to go for the rest of the day?", "No, sir." (Tr., p. 25). Similarly, Track Supervisor Mr. B. L. Curry responded "No" to the question: "Did you, at any time, in your instructions or conversation, on Friday, June 25, 1982, with Mr. Morelock or Mr. Gore, or Mr. Sikes, authorize them to 'Take on off' after they had delivered the crane to Tomball?" The evidence of record clearly supports the finding that Claimant left the property at Tomball at approximately 2:45 p.m. without proper authority.

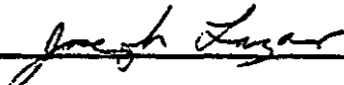
The Organization argues that Claimant did not have his meal period prior to departing from Tomball and travelling to Roans Prairie to obtain a meal for which he had not been given time during the regular hours of service. Also, the argument is made that Claimant was instructed by the Track Supervisor and by the Relief Foreman to avoid overtime, and this could not have been avoided if Claimant had not left the property when he did.

The Board has weighed these considerations with care. The record is clear that both the Track Supervisor and the Relief Foreman expected the Claimant to wait at Tomball for further instructions. They did not expect Claimant to depart prior to the end of his tour of duty. They were both concerned about the location of the key to the ignition. Although Claimant testified that he did in fact wait, it is clear that if he had waited just a few minutes, perhaps only five minutes, he would have seen his Relief Foreman and the problem of his meal period would have been resolved under proper authority.

Rule 570 requires that employees "must not absent themselves from duty...without proper authority." This is a most important rule. Failure to comply with this rule is at the peril of the violator and subjects the violator to discipline. The discipline of ten-day suspension from service is appropriate and commensurate with violation and is progressive with prior service record entries. The discipline was not arbitrary, excessive, or capricious and must be sustained.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Machine Operator R. D. Morelock is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: April 3, 1984