

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 14

CASE NO. 14

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) and
DISPUTE) BURLINGTON NORTHERN (Former Joint Texas Division)

STATEMENT
OF CLAIM:

1. That the Carrier violated the provisions of the current Agreement when it suspended Machine Operator R. D. Morelock for a period of fifteen (15) days based on charges not sustained by the hearing record, said action being excessive and in abuse of discretion.

2. That Claimant be compensated for all wage loss suffered and that the charges be stricken from his record.

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 October 19, 1982 of "suspension for 15 days from the service of the Fort Worth and Denver Railway Company for violation of Rule 570 of the Burlington Northern Safety Rules and General Rules in connection with your failure to report for duty at the designated time on August 10, 1982, at Normangee, Texas; in connection with your failure to comply with instructions to pick up trackman James Grayson at Normangee at 7:00 a.m., August 11, 1982, and without authority ordering trackman Grayson to report for duty at Shiro instead of Normangee August 11, 1982; and in connection with your failure to operate machine to which you are assigned, instead allowing unauthorized and unqualified employee to operate machine alone on highway August 12, 1982, as evidenced by a formal investigation afforded you September 28, 1982, 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."

A. Concerning Claimant's alleged "failure to report for duty at the designated time on August 10, 1982, at Normangee, Texas:"

The testimony of Mr. D. C. Young, Jr., Assistant Roadmaster, is that:

"I had some rail relay equipment that had arrived in Houston and instructed Ron (the Claimant here) to move his machine, which is BRI 25, from Teague to North Houston. This was approximately 10:00 a.m., August 9, at which time I asked him, I asked Ron if he needed to get any clothes, money or anything and he said he did not, but he had a little work to do on his machine before he left, so I told him as soon as he got his work done to leave for North Houston. Period." (Tr., p. 6).

Claimant was further instructed to have trackman, Mr. Will Heggins, who was assigned to the Section headquartered at Teague, Texas, to accompany him in the move and operate Claimant's privately owned vehicle and act as a flyman following the crane.

The Assistant Roadmaster further testified in response to the following question asked by Claimant:

"Q. Was the possibility of an assumption and understanding between myself and you that I would return home that evening, August 9, and pick up my suitcase and money, in order to make the trip south?

A. I would assume so because you would have to get Mr. Heggins back to Teague." (Tr., p. 16).

On August 9th, the crane moved approximately fifty (50) miles south to Normangee, at which time Claimant and Mr. Heggins returned to Teague, arriving there at approximately 4:00 p.m. Thereafter Claimant traveled to his home in Corsicana for the purpose of picking up some clothes and obtaining funds for meals and lodging in the course of the move. The following morning, after obtaining clothes and funds, Claimant returned to Teague, where he picked up some parts for the crane, and went on to Normangee, "at fifteen til nine". (Tr., p. 39).

The evidence of record is clear that the Assistant Roadmaster did not give Claimant a direct order to obtain clothes and funds prior to the move to Normangee, leaving a mutual assumption that Claimant would be returning to Corsicana, his home, on the evening of August 9th, for that purpose. It is also clear that Claimant picked up parts for the crane at Teague prior to continuing on to Normangee on the morning of the 10th. Under the circumstances, the Carrier has failed to sustain its discipline for Claimant's alleged "failure to report for duty at the designated time on August 10, 1982, at Normangee, Texas."

B. Concerning Claimant's alleged "failure to comply with instructions to pick up trackman James Grayson at Normangee at 7:00 a.m., August 11, 1982, and without authority ordering trackman Grayson to report for duty at Shiro instead of Normangee August 11, 1982:

The testimony of Track Supervisor E. J. Grayson is clear that he did "issue instructions that Mr. Morelock was to pick up trackman James Grayson at Normangee at 7:00 a.m., August 11, 1982". (Tr., p. 17). Track Supervisor Grayson testified: "I issued Mr. Morelock and Mr. Grayson, got them together and issued the instructions to Mr. Morelock the 11th of August at Shiro." (Tr., p. 18).

In response to the question, "Did Mr. Morelock and Mr. Grayson meet at Normangee as instructed by you?" Mr. E. J. Grayson stated: "No, sir." (Tr., p. 18). Claimant similarly testified:

Q. "Were you trying to be obstinate and disobey instructions?" "A. No, sir, we had both tried to get Mr. E. J. Grayson by phone, not only E. J. Grayson, but also pass the word to James Grayson's foreman for him to call me in Huntsville to let him know what was occurring, and if permission be needed, to get permission from him for us to start our work period at Shiro." (Tr., p. 54).

The evidence of record is clear beyond doubt that Claimant correctly understood the instructions from his Track Supervisor to meet trackman Grayson at Normangee on the morning of August 11, and it is clear that Claimant disobeyed the instructions. Although Claimant made a bonafide effort to obtain permission to deviate from

the instructions and was unsuccessful in reaching Track Supervisor Grayson, it was feasible for Claimant to comply with the instructions. Instructions normally must be complied with, and are to be regarded seriously. Obedience is to be expected of a responsible employee, and a devil-may-care attitude towards compliance is a predictable path to disaster. Claimant's disregard of instructions in the instant case fully supports the Carrier's disciplinary suspension.

C. Concerning Claimant's alleged "failure to operate machine to which you are assigned, instead allowing unauthorized and unqualified employee to operate machine alone on highway August 12, 1982".

The evidence is undisputed that Trackman Grayson drove the machine over the highway without having a commercial license:

"Q. (addressed to Trackman Grayson) Did you drive Mr. Morelock's truck?

A. One time.

Q. What did you do the rest of the time?

A. Drove the Bantam.

Q. Does it take a commercial license to operate this machine over the public highway?

A. I don't know that.

Q. Do you have a commercial license?

A. No, sir."

(Tr., p. 30)

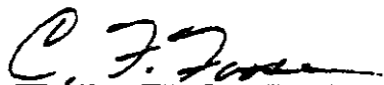
Rule 570 provides, in part, that employees "must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority." It is undisputed that Claimant was not authorized to "exchange duties with or substitute" Trackman Grayson in his own assignment of machine operator. Rule 570 requires "proper authority" for the machine operator, the Claimant here, to call on the trackman to operate the machine on the highway in the given circumstances. This is not within the discretion of the machine operator. The property and lives of Claimant, the Carrier's employees, and the public are not to be put at risk by failure to comply with Rule 570. In proper circumstances, under appropriate supervision, the Carrier may, of course, authorize through "proper authority" an employee other than the machine operator to operate the machine. This, however, was not the case here. Rule 570 was violated.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied, except, however, the suspension of Machine Operator R. D. Morelock shall be reduced from the fifteen (15) day suspension to a ten (10) day suspension.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: 