

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 22

CASE NO. 23

<u>PARTIES</u>	)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
<u>TO</u>	)	and
<u>DISPUTE</u>	)	BURLINGTON NORTHERN RAILROAD (Former JTD)

STATEMENT
OF CLAIM:

1. That the Carrier's decision of August 27, 1985 to suspend Machine Operator Mr. R. E. Morelock for a period of thirty (30) days was in violation of the Agreement, unduly harsh and in abuse of discretion.
2. The Carrier will now be required to dismiss all charges against Claimant and his record be cleared of all charges with compensation for wage loss suffered.

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 employe and Carrier within the meaning of the Railway Labor Act, that it has jurisdiction over the parties and the subject matter, and that the parties and Claimant were given due notice of the hearing held.

Claimant Machine Operator R. D. Morelock has been an employee of the Carrier since February 24, 1976. On the morning of August 8, 1985, he was employed as a Machine Operator, operating a Little Giant Crane, BNX 15-0057, a truck mounted crane which is equipped with high rail equipment allowing it to operate both on the tracks as well as off the tracks.

Under date of August 27, 1985, Claimant was advised that: "As a result of investigation afforded you on August 15, 1985 this is to advise you that a letter of censure is being placed on your file and you will be suspended from service of the Burlington

Northern Railroad for 30 days beginning on August 29, 1985 and ending on September 27, 1985, inclusive, for violation of Rule 570 of the Burlington Northern Safety Rule Book for leaving assignment without authority while assigned as Machine Operator on Little Giant Crane BNX 15-0057 working at Bardwell, Texas."

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."

The transcript of investigation leaves no doubt that Claimant left his work site without the permission of his Track Supervisor. Claimant testified:

"Q. Did you in fact, leave the work site at which your crane was assigned on August 8?

A. Yes.

Q. Did you ever ask of Mr. Boswell any authority to be absent from work?

A. No.

Q. Did he state to you that he wanted you on the crane and wanted you to start movement of the crane?

A. Yes.

Q. Were you given any permission by Mr. Boswell to leave work on August 8?

A. No.

Q. Had Mr. Boswell told you not to leave your work station on August 8?

A. Yes.

Q. Did you do so, anyway?

A. Yes." (Tr., p. 18).

The reasons why Claimant left the work site are given in the following testimony:

"Q. Did he (Mr. Boswell) state to you that he wanted you on the crane and wanted you to start movement of the crane?

A. Yes.

Q. Given those statements to you, why did you not do as he instructed?

A. First of all, I had been violating all rules with the company if I had placed the machine on the track with no TWC, no line-up, no proper protection, I could not obey his instructions without violating these rules of the company." (Tr., p. 18).

"Q. Is there any particular reason for which you didn't talk to him about other considerations such as track authority, or TWC track warrants before leaving the work site?

A. Well, the thing is that, the man got in my face and was giving the first instructions to place the machine on the track and the form of harassment that he was placing towards me at the time it was kind of hard to think clearly about whether or not he had acquired TWC or whatever.

Q. After 7:55 a.m. August 8, 1985, did you ever return to your work site?

A. Not at Bardwell, I went to Corsicana in order to try to locate my machine supervisor." (Tr., p. 18).

"Q. Was the manner in which he delivered instructions to you such that it provoked your belief that you could leave the work site?

A. Yes sir.

Q. Was it ever indicated to you that you had other alternatives to absence without proper authority from the work site?

A. No, I wanted to find the proper authority.

Q. Did you contact any other supervisor of the railroad on August 8, 1985, to discuss this matter?

A. I tried for four and one-half hours to locate Wayne Kolkman, he is the Assistant Supervisor of machinery. And if hence, if I could have found him we would have returned to the job site, to let him explain to Mr. Boswell about the operation of the

machine that I'm assigned to and my responsibility of the machine, because Mr. Boswell would not listen to me at all." (Tr., p. 21).

"Q. Mr. Morelock, do you feel that any form that Mr. Boswell was violating the rule by using profane language or having harassment type attitude?

A. Yes, I do, totally.

Q. Can you explain to me why you feel that way?

A. He got right in my face, and when he...when he made the statement: "Get the God damn machine on the track and start unloading plates", I just couldn't...I just look at him for a minute and I figured he would explain himself. And he...but he didn't and I don't know whether he had a bunch of problems the day before or what, but he just...he would not explain himself clearly to me.

Q. If Mr. Boswell got right in your face, could you explain what you mean how close or...

A. As close enough, if I'd thought for a minute he was going to kiss me. I hate to say that, but that is exactly how close." (Tr., p. 23).

"Q. Does anyone present at this time have any further statement they wish to make pertinent to this investigation? Specifically Mr. Peoples and Mr. Morelock.

A. (Mr. Morelock)....And as far as his attitude that morning towards me, I would not think it to be the conduct of a supervisor or officer of the company, in giving me a direct order not only would I...was I in violation, totally in violation by putting that machine on the track, but it would have been endangering myself, the machine and the company, and I was so shook up at the time I just knew I had to get some other word from another supervisor. And that's all I have to add." (Tr., p. 26).

Claimant's concern about moving the Crane onto the main track was the subject of interrogation of the Track Supervisor, Mr. Boswell, who testified:

"Q. Mr. Boswell, with reference to this statement, what track did

- you intend that Mr. Morelock place his machinery on?
- A. The main line and then go into the house track.
- Q. Is he required to have a track warrant to place this machinery on the main line?
- A. Yes, if he don't have a line-up or if there is anything coming?
- Q. Had you as a supervisor, taken any measures relative to track warrants or line-up information?
- A. Yes." (Tr., p. 26).

The record is clear that when the Track Supervisor gave Claimant the instructions to move the crane onto the main line, the Claimant was not informed that the Track Supervisor had the track "out of service, the whole track, the main line out of service, through the dispatchers." (Tr., p. 27). The transcript shows Claimant asking Boswell:

- "Q. When you came up there, and gave me instructions, Boswell, why didn't you let me know what you were doing...going to do that morning? In other words, whether you had TWC or whatever, or what was the condition, you didn't...you didnt say anything to me other than what you just...just get the God damn machine on the track right now, start unloading plates. I'm asking you now in this investigation, why?" (Tr., p. 27).

The evidence of record is clear that Claimant left the work site without the permission of his supervisor. Rule 570 clearly provides that employees "must not absent themselves from duty... without proper authority." On the face of it, the Carrier reasonably concluded that Claimant was in violation of Rule 570. When the peculiar facts and circumstances of this case are examined into more deeply, it is clear that Claimant fiercely opposed placing his life in jeopardy and violating safety rules by placing the crane on the main line at a time when he was not informed that the main line had already been taken out of service by the dispatcher. Claimant left the work site not as an absence from duty but in a search for his machine supervisor "to let him explain" the situation to Mr. Boswell. It was the intention of Claimant to remain on duty once the situation was clarified.

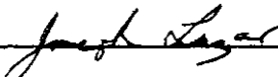
In the special and peculiar circumstances of this particular case, the disciplinary action by the Carrier was not warranted.

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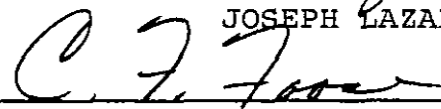
A W A R D

1. The Carrier is in violation of the Agreement.
2. The claim is sustained.

ORDER: The Carrier shall implement this award within thirty (30) days of date of this award.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



L. MARES, CARRIER MEMBER

DATED: _____

