

PUBLIC LAW BOARD NO. 2960

AWARD NO. 12
CASE NO. 9

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The thirty (30) day suspension assessed Foreman A. Q. Cisneros for alleged insubordination was without just and sufficient cause and unproven. (Carrier's File D-11-16-86)
2. Foreman A. Q. Cisneros shall be compensated for all wage loss suffered."

OPINION OF THE BOARD:

The Carrier, by letter dated April 21, 1980, directed the Claimant to attend an investigation on the following charge:

"Your responsibility for failing to comply with instructions given to you on April 1 and 2, 1980, to report to derailment near Careyhurst, Wyoming."

Subsequent to the hearing, Claimant was given a 30-day suspension.

In reviewing the evidence, it is the conclusion of the Board that there is substantial evidence to support the charge that the Claimant was guilty of failing to comply with instructions particularly on April 2, 1980.

The record reflects that Roadmaster Root sent a message to the Claimant to report at 6:00 a.m. April 2 to report to a derailment at MP

564.6, west of Careyhurst. The message was sent through the train dispatcher. It is apparent that the dispatcher delivered the message. The Claimant then asked the train dispatcher to inform Roadmaster Root that he could not report because he was to report to Chadron, Nebraska, April 2, to begin a new assignment on which he recently bid as a Machine Operator. The Machine Operator position was on the territory of Roadmaster Crawford. When this reply was given to Root, Root then asked the dispatcher to tell the Claimant to call him at home that evening. The record then reflects that on April 1 after Roadmaster Root received the Claimant's reply, he did not again instruct the Claimant to report to the derailment. The only order he received after his reply was to call the Roadmaster at home. The Claimant testified that both he and his wife tried to call the Roadmaster that night but were unsuccessful in reaching him.

The Claimant did reach Roadmaster Root at 6:00 a.m. April 2, 1980. Mr. Root testified that during this conversation he directed the Claimant to report to the derailment and also informed Claimant that he had talked to Roadmaster Crawford regarding needing the Claimant for the derailment duty. The Claimant admitted being told by Root that " . . . I better be there." Moreover, he admits he did not report to the derailment.

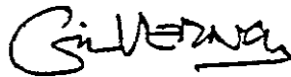
The above evidence makes it abundantly clear that the Claimant failed to comply with Roadmaster Root's instructions issued at 6:00 a.m. on April 2 to report to the derailment. If the Claimant felt he was somehow not obligated to report to Roadmaster Root's territory or comply with his instructions because he was to start an assignment

later that day on Roadmaster Crawford's territory, he had an obligation to comply now and grieve later. The "comply now-grieve later" principle is so well established it doesn't require precedental citation.

Regarding whether 30 days is appropriate discipline for this offense, we do not find it to be excessive.

AWARD

Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date: Feb 5, 1982