

PUBLIC LAW BOARD NO. 2960

AWARD NO. 53

CASE NO. 47

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The fifteen (15) day suspension assessed Foreman D. D. Lorentzen for alleged insubordination was without just and sufficient cause. (Organization's File 4D-2339; Carrier's File D-11-3-359)
- (2) Foreman D. D. Lorentzen shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On August 24, 1981, the Carrier sent a notice to the Claimant directing him to attend an investigation. The notice read in pertinent part as follows:

"PLACE:	Roadmaster's Office, Boone, Iowa
DATE:	Monday, August 31, 1981
TIME:	10:30 a.m.
CHARGE:	Your responsibility in connection with failure to follow instructions given to you by A. D. Finney at the high bridge near Boone, Iowa, at approximately 8:40 a.m., Monday, August 24, 1981.

You may be accompanied by one or more persons of your own choosing subject to the applicable rules of the Brotherhood of Maintenance of Way Employee's schedule, and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company.

This will confirm verbal, notification that you are hereby withheld from service with the Transportation Company pending the results of the hearing."

Subsequent to the investigation the Claimant was assessed the discipline now on appeal before the Board.

The basic facts are not in dispute. On the day in question, the Claimant was employed as a Track Foreman working on the high bridge at Boone, Iowa, where the Engineering Department was involved in re-decking the bridge. The bridge is approximately 2700 feet long and 180 feet high. The weather that morning was foggy, as it had been for several days previous. The Claimant approached Division Training and Development Supervisor Finney, who was assisting in the supervision of the project, and questioned why they were working in the fog. Mr. Finney advised that it was their job to do so in order to complete the project. The Claimant then proceeded out onto the bridge, but returned shortly thereafter advising Mr. Finney that he would not work out on the bridge because of the fog. Mr. Finney told the Claimant to return to the job, but the Claimant continued to walk off the bridge. Mr. Finney then told the Claimant that if he did not return to the bridge, he would be removed from service and subjected to investigation. The Claimant ignored these instructions.

The critical question in this case relates to the application of what might be termed the safety exception to the "obey now and grieve

later" rule. It is well established that employees are obligated to obey directives of their supervisors unless there is reasonable basis to believe that compliance with such an that would endanger the employee's safety, health, life, or limb beyond the normal risk inherent in the employee's job. Moreover, it is well established that it is the employee's burden to show that the "safety exception" applies.

The Claimant explained his position at the hearing. To summarize, the Claimant was concerned that the fog limited his visibility and did not allow him to see oncoming trains or construction equipment. In fact, he indicated it was after he was on the bridge the first time that a train came by and he could not see the headlight until it was 200-300 feet down the track. He was concerned with the possibility of being struck by a train or other moving equipment being utilized due to the fact he may not have enough warning to get out of the way. On other occasions, he claimed such equipment had nearly struck him.

When the Claimant's defense is compared to the circumstances as a whole on the day in question, the Board concludes that the Claimant failed to justify his refusal to perform his duties on the bridge. Mr. Finney, Supervisor, testified that the visibility was 390-400 feet and the B & B Foreman indicated he could see the train light 400-500 feet away. In addition, all trains--according to the Carrier witnesses--were instructed to whistle extensively while crossing the bridge. Train movements were also protected with "Y" orders and the crew on

the bridge was always notified before a train proceeded across. Other equipment also had warning signals when moving. One of the tracks on the main line was out of service which gave the crews a place to stand in the clear. In addition, there was a walkway with a handrail. It is also noted that other crews were working on the bridge at the time and no one else had had difficulty working. There had also been several safety meetings concerning working on the bridge.

The Board also found it significant that the Claimant refused to discuss the situation with Finney. This is somewhat inconsistent with the idea of an employee who sincerely believed he had a legitimate safety concern. It would have been more likely, if he had a legitimate concern, he would have discussed it with Finney. We also note a tacit admission on the Claimant's part of his guilt. When asked if he ultimately performed his duties, he said "yes, and I thought better shortly after that."

In view of the substantial evidence that exists to support the Carrier's findings, the Claim will be denied.

AWARD: The Claim is denied.

G. Vernon

Gil Vernon, Chairman

H. G. Harper

H. G. Harper, Employee Member

J. D. Crawford

J. D. Crawford, Carrier Member

Dated: \_\_\_\_\_

5-8-84