

PUBLIC LAW BOARD NUMBER 3566

Award Number: 11
Case Number: 11

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Mr. D. Williams requesting that Carrier pay him for all time lost and remove the charge from his service record.

FINDINGS:

On June 28, 1983, Claimant was working as a switch oiler at Carrier's Lindenwood Yard. At approximately 9:40 AM, Track Foreman R.J. Jansen saw Claimant near Arlo Shanty at the east end of the yard. Jansen determined that Claimant had not been properly performing his assigned duties, and removed Claimant from service. Claimant was assessed an actual suspension of seven days.

A hearing was held in order to investigate the charge against Claimant. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had violated Safety Rule 502 and that the discipline assessed against him was justified. The Organization filed a claim protesting Carrier's actions and requesting that Carrier compensate Claimant for lost pay and remove the charge from his work record. The claim was denied at all levels

of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was suspended for just and reasonable cause; and if not, what should the remedy be.

Carrier's Safety Rule 502 of the Maintenance of Way Department states in part that employees "must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

At the hearing, Jansen testified that he was approaching Arlo Shanty in an automobile when he saw Claimant inside reading a newspaper. Jansen testified further that he had the Superintendant stop the car so that he could speak to Claimant. According to Jansen, Claimant met him outside the shanty, at which time Jansen removed Claimant from service.

Claimant testified that he had entered the shanty only to use the restroom, and that he had not been reading a newspaper. Claimant admitted that from inside the shanty someone could see "several hundred yards" down the road, but contended that someone driving up the road in a car would not be able to see into the shanty.

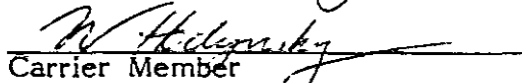
Claimant offered no explanation as to why Jansen stopped the car in order

to speak to Claimant if he could not see into the shanty. In addition, there is no evidence that Jansen had any motive for testifying falsely regarding Claimant's on-duty conduct. For these reasons, it is the opinion of this Board that the record contains clear and convincing evidence that Claimant was sitting and reading a newspaper while on duty in violation of Carrier's Safety Rule 502. In view of Claimant's poor service record, it cannot be held that the seven-day suspension was overly harsh or excessive under the circumstances. Accordingly, the claim is denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: February 1, 1985