

PUBLIC LAW BOARD NO. 4104

Case No. 4

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The carrier violated the Agreement when it failed to grant Machine Operator S.A. Wilhwlm an unjust treatment hearing as timely requested by him in his letter dated June 24, 1982. (System File Reg. Gang/Gr. MWA 82-9-17D)
2. Because of the Carrier's violation of the Agreement Claimant shall be afforded the remedy prescribed in Rule 40G."

Opinion of Board: At the time this dispute arose Claimant was employed as a Machine Operator, working on Tie Gang No. 3 between Eri and Barstow, Illinois. On June 24, 1982, Claimant and Manager of Regional Gangs R.K. Russell became involved in a dispute concerning Manager Russell's order to other Laborers to board a truck.

As a result of this incident, Claimant requested an unjust treatment hearing pursuant to Rule 62 of the Agreement. Carrier rejected that request. Instead, it ordered Claimant to attend an investigation in connection with "your alleged insubordination to Manager of Region Gangs and failure to wear proper protective equipment as instructed - - on June 24, 1982" (See Carrier's Exhibit No. 2)

The investigation was held on July 6, 1982 and, by letter dated August 3, 1982, Carrier notified Claimant he had been

Case No. 4

suspended ten days. The Organization timely appealed Carrier's decision. Carrier rejected the appeal. Thereafter, the Organization advanced the claim to this Board for adjudication.

The Organization contends that Claimant was entitled to a Rule 62 Hearing under the facts of this case. Since Carrier did not afford him one, the Organization argues that the claim should be sustained on this basis alone.

Carrier maintains that it did provide Claimant a proper hearing. Moreover, it insists, Claimant is not entitled to an "unjust treatment hearing since at most other Laborers, and not Claimant, were being dealt with unfairly. Finally, Carrier submits, the claim should also be dismissed because the Organization waited some three years to advance the claim to this Board after it received the decision of Carrier's highest designated officer on the property.

The Board is convinced that Claimant is entitled to an unjust treatment hearing under Rule 62. Clearly, he asked for one in a timely manner. Carrier rejected that request. Thus, it violated the clear language of Rule 62 which mandates such a hearing if requested by the employee.

Carrier contended that Claimant had no standing to request such a hearing since, at most, others were being unfairly treated. We do not agree. Claimant engaged in a verbal confrontation with his supervisor. He believed he was

Case No. 4

being harassed. While his belief may have been incorrect, it still related to unjust treatment of him, and not other Laborers.

We note that a disciplinary hearing such as Claimant received, would ordinarily cover all the issues contained in an unjust treatment hearing. However, the Organization sought to include testimony concerning Manager Russell's actions which was disallowed:

"Objection by: M.A. Oliver, Track Engineer

I'll have to object to your line of questioning because we're not investigating whether or not Mr. Russell complied with the rules. We're investigating the fact of Mr. Wilhelm."

As such, Carrier prohibited evidence which would normally have been raised in an unjust treatment hearing. Therefore, the holding of the disciplinary hearing does not invalidate Claimant's right to an unjust treatment hearing.

Finally, we note the Organization's contention that Claimant be afforded the remedy set forth in Rule 40G. However, we have ruled, Claimant is simply entitled to a Rule 62 hearing and nothing more. Nonetheless, and for the foregoing reasons, the claim is sustained to the extent indicated in the Opinion.

Case No. 4

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934:

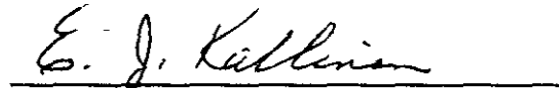
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

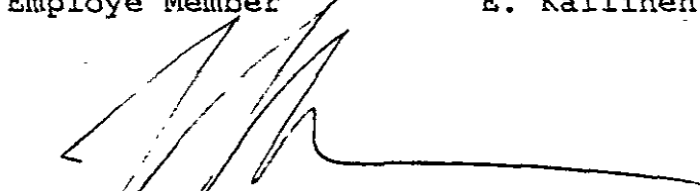
That the Agreement was violated.

AWARD:

Claim sustained to the extent indicated in the Opinion


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

Feb. 7, 1989