

PUBLIC LAW BOARD NO. 4104

Case No. 43

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

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

1. "The fifteen (15) day suspension imposed upon Machine Operator, G. T. Denny, for alleged 'violation of Rules 570 and 576 of the Burlington Northern Safety Rules' was without just and sufficient cause and in violation of the Agreement (System File 1 Gr GMWA 85-5-27).

2. The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This dispute concerns a fifteen day suspension assessed by Carrier against Claimant, Machine Operator G.T. Denny. On October 13, 1984, Claimant was due to report for duty at 7:30 a.m. for overtime work at Downer's Grove, Illinois. However, Claimant did not report for work at that time. On Sunday, October 14, 1984, Claimant reported for overtime duty and worked twelve hours. On Monday, October 15, 1984, the Claimant obtained permission to seek medical attention for his illness at the Winnebago County Department of Public Health.

As a result of his October 13th absence, Carrier conducted a hearing on October 26, 1984. On November 19, 1984, Claimant was notified that he was being assessed fifteen days suspension for "failure to comply with instructions...thereby being absent from duty."

The Organization asserts that Claimant was unable to work on October 13, 1984 because of illness. It states that testimony reveals that he went to the emergency room to be tested for illness

and was told that he had to go to the Health Department which was closed until Monday, October 15, 1984. At the trial, it maintains, he submitted medical documentation supporting his testimony. The Organization contends that Claimant attempted to call Roadmaster Cline two times prior to his starting time but received no answer. It argues that Claimant was specifically instructed by Roadmaster Cline to call his office whenever he was unable to protect his assignment. The Organization avers that testimony of Cline reveals that he was not present in his office that entire morning. In the Organization's view, Claimant attempted to contact Cline on October 13, 1984 and, through no fault of his own, was unable to do so. Accordingly, the Organization asks that the claim be sustained.

Carrier, on the other hand, points out that if Cline was not present in his office, a 24-hour yardmaster could reach him by radio when telephone calls concerned him. It asserts that there is no evidence to support Claimant's allegation that he attempted to call two times. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged. It asks that the claim be denied.

After reviewing the record evidence, the Board finds that there is sufficient competent evidence to support disciplinary action against Claimant. However, Claimant was specifically instructed to contact Roadmaster Cline should he be absent from duty, and did attempt to do so on two occasions. The fact that Cline was not present in his office at the time is not the fault of the Claimant. However, it is clear that he did not receive

permission to be absent on that day, nor did he attempt to contact Cline any time later that morning.

Under the circumstances, the discipline shall be reduced to a ten day suspension. Accordingly, the claim is sustained to the extent indicated in the Opinion.


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;

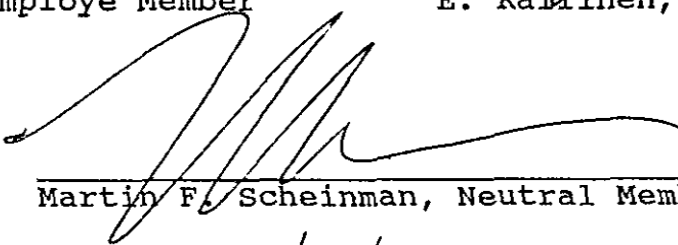
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

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

1/20/90