

PUBLIC LAW BOARD NO. 4104

Case No. 46

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 thirty (30) days suspension imposed upon Section Foreman K.C. Chantry for alleged 'violation of BN Maintenance of Way General Rule D and Rule 885' was without just and sufficient cause and in violation of the Agreement. (System File 5 Gr GMWA 85-5-28)

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 thirty day suspension assessed by Carrier against Claimant, Section Foreman K.C. Chantry. On August 22, 1984, Roadmaster A.R. Jacobs received a telephone call from Laborer F.E. Allen regarding a request for medical attention as the result of an injury sustained on August 15, 1984. Laborer Allen reported that a personal injury report had been submitted to his Foreman on August 15. Roadmaster Jacobs discovered that the report had not been forwarded to the division superintendent as required.

As a result, Claimant was ordered to appear for an investigation in connection with the following charge:

"Attend investigation in the Yates City Depot, Yates City, Illinois at 1:30 p.m., August 30, 1984, for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged failure to promptly report personal injury to F.E. Allen which occurred on or about 10:30 a.m., August 15, 1984, and your alleged failure to protect from injury employees working under your supervision, while assigned as Section Foreman, Q-202, Peoria, Illinois."

The investigation was held on August 30, 1984. On September 26, 1984, Claimant was assessed a thirty day suspension. The Organization appealed Carrier's suspension of Claimant. Carrier denied the appeal. Thereafter, the clam was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier failed to produce Laborer F.E. Allen as a witness to the investigation to ascertain the facts concerning the personal injury and the reporting of it. It states that Claimant was denied a fair and impartial investigation when Carrier failed to call all principles as witnesses who had facts pertinent to the investigation. It asks that the claim be sustained on procedural grounds alone.

As to the merits, the Organization argues that Claimant properly completed a Personal Injury report for Laborer F.E. Allen on August 15, 1984. It asserts that Claimant did not forward the report to the Superintendent since the injury did not appear to be of any significance in that Allen continued to work on that day. The Organization contends that Allen did not want to fill out the Personal Injury report and it was only after Claimant's insistence that he do so "for the record" that it was completed. Under such circumstances, the Organization suggests, there was no intention on the part of the Claimant to disregard Carrier's procedures. It maintains that the injury was documented by Claimant on the day that it occurred; additionally, Carrier suffered no liability as the result of Claimant's actions. Therefore, the Organization

reasons that claimant was improperly suspended. Accordingly, it asks that the claim be sustained on its merits as well as on procedural grounds.

Carrier denies that Claimant was not afforded a full and impartial investigation. It argues that the testimony of Allen would not contribute to the testimony of other previous witnesses. It was not refuted by Carrier that Allen did not wish to have the accident report filed. Accordingly, it was determined that the testimony of Allen would have no relevance as to the charges against Claimant. As to the merits, Carrier avers that Claimant was properly found guilty as charged.

A careful review of the record evidence convinces us that the claim must fail. This is so for a number of reasons.

First, the record evidence reveals that Claimant was afforded a full and fair investigation. It was the decision of Carrier that Allen would not have testified to any facts not already revealed in the testimony of prior witnesses. The only testimony that Allen would have contributed was the fact that he did not wish to have the report filed. That fact was unrefuted by Carrier witnesses and, furthermore, has no relevance to the charges.

As to the merits, the record contains substantial evidence of Claimant's failure to submit the personal injury report to the Superintendent. Claimant acknowledged that he did not submit the report because no medical treatment was required. Such defense by Claimant is not acceptable. Additionally, the fact that Allen did not wish to have the report filed is irrelevant; as a Foreman,

Claimant is required to report all injuries of those employees he is responsible for. Accordingly, Claimant clearly violated appropriate Carrier rules here.

However, under the circumstances, the discipline assessed is excessive. The suspension shall be reduced from thirty days to twenty days. Accordingly, the claim is sustained to the extent indicated in the Opinion.

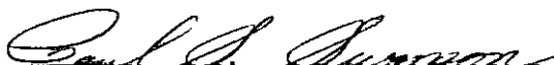
FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

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;

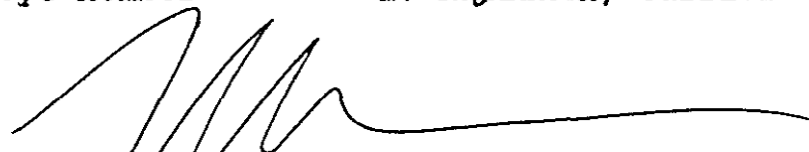
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

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