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PUBLIC LAW BOARD NO. 4104

B.M.W.E.

Case No. 65

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 discipline (five days suspension and thirty days suspension) imposed upon Section Foreman A.O. Anderson for alleged failure to promptly report a personal injury and alleged failure to comply with instructions from the proper authority, respectively, was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement.

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

OPINION OF BOARD: Two investigations were held to determine whether Claimant, A.O. Anderson, a Section Foreman assigned to direct and supervise the Milford, Nebraska Section Crew, failed to comply with instructions and failed to promptly report his alleged personal injuries. Based on the investigative records, Claimant was assessed a thirty day suspension and a five day suspension, respectively.

The Organization appealed the suspensions of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

In defense of its claim regarding the failure to report personal injuries, Claimant contends that he did not believe the injury to be of a serious nature, and continued with the remainder of his tour. He maintains that his supervisor told him not to file a report unless he had to go to a doctor. Claimant alleges that

he began experiencing pain and discomfort for the next three weeks and sought medical attention on August 18, 1985. At that time he completed the personal injury report. In the Organization's view, Claimant reported his injury to his supervisor, but since he was told not to complete a report unless he needed a doctor, he did as instructed by his supervisor. It maintains that although Roadmaster Mason denied any knowledge of the injury, such testimony should not be considered credible since Mason would be held liable if it was learned that he instructed employees not to submit personal injury reports. For those reasons, the Organization reasons that Claimant complied with the procedure to complete a report and the claim should be sustained.

As to the charge for "...failure to comply with instructions from proper authority...", the Organization maintained that Claimant believed he was in compliance with instructions from Roadmaster Mason. It maintains that Claimant became ill on August 5, 1985 at 5:30 p.m. while performing overtime work at Pleasant Dale and went home. The following day, Claimant asserts, he reported for work and was informed by Mason that he did not follow his instructions to report to the derailment at Utica the previous evening. Although Claimant maintains that he was still ill and would only be at the headquarters to complete time rolls, he alleges he was instructed to remain there for the day. In view of the above, the Organization avers that Claimant was still ill when he reported to work and would leave when he completed necessary paperwork at section headquarters. It asserts that Claimant

believed that he was complying with the instructions of Mason. Accordingly, the Organization contends that Claimant was improperly disciplined and asks that the claim be sustained.

This Board concludes that the Carrier did violate the Agreement when it assessed a thirty day suspension and a five day suspension against Claimant for the aforementioned charges. While it is true that Claimant did not complete the personal injury report timely, nothing in the record supports the motive of intent. We concur with Carrier that it has the right to require that prompt reports be made concerning injuries or accidents. At the same time, should an employee fail to do so, such failure must be viewed on the particular circumstances. In this case, we do not believe that there was a deliberate attempt to violate the Carrier rules. Accordingly, the five day suspension is not sustained.

As to the other charge regarding failure to comply with instructions, again we conclude that Claimant believed he was in compliance with Mason's instructions. It was unrefuted that Claimant was severely ill the day before and could not continue his overtime assignment. He reported for work the next day only to complete time roll records and would again go home. In these circumstances, the Board concludes that Carrier's charge is not supported by the record made at the investigation. The claim shall therefore be sustained.

It must be noted that Claimant's suspensions were assigned to the time frame when he was medically withheld from service. Accordingly, he did not suffer any monetary loss. The Claimant's

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record shall be cleared of the charges leveled against him.

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

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