

PUBLIC LAW BOARD NO. 4104

Case No. 72

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 (5) days suspension, imposed upon Sectionman S.W. Timmons and Truck Driver P.K. Ingold for alleged violation of Rule 576 of the Burlington Northern Safety Rules was capricious, unwarranted, without just and sufficient cause and on the basis of unproven charges.

2. The Claimants' records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimants, P.K. Ingold and S.W. Timmons, were assigned to Section Gang 206 at Ravenna, Nebraska when the dispute arose. Claimants were assessed five day suspensions for being insubordinate on account of refusal to comply with instructions of their supervisor. The work involved the unloading of switch ties.

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

The Organization contends that the ties were covered with ice and snow making unusually slippery conditions. It argues that the Claimants requested permission to obtain a tool to assist them; they also called their General Chairman concerning the safety of the instructions. It asserts that when they returned to the job site, they followed the previous instructions. The Organization admits that the Claimants did not immediately follow instructions. However, it asserts that if Claimants did comply with the

instructions, they would have jeopardized their own safety. It argues that non-compliance with an order that represents danger to the safety of an employee does not constitute insubordination. For such reasons, the Organization asks that the claim be sustained.

Carrier, on the other hand, asserts that the refusal to obey instructions of a supervisor is of a serious nature. If employees questioned such instructions, it would be impossible for Carrier to maintain its operation. Carrier avers that Claimants were charged with their refusal to perform work assigned to them by their supervisor, without first obtaining an additional tool and consulting with their General Chairman. Accordingly, Carrier asks that the claim be rejected.

After a review of the record evidence, the Board finds that it supports the claim of the Organization. This is so for a number of reasons. While we agree with Carrier that the employees cannot be permitted to pick and choose amongst the various duties of their particular assignments, such was not the case here. Claimants requested permission to obtain a tool which would assist them in unloading the ice-covered switch ties. We do not believe that to be an unreasonable request. Claimants felt that the unusually slippery conditions constituted an immediate danger and attempted to seek a safe course of action. The fact that they also contacted their General Chairman is not material at this point. The fact remains that after a fifteen minute lapse, the employees did comply with the instructions and completed the assignment.

However, we must emphasize that when a proper work-related

instruction is given by duly constituted authority, an employee cannot invoke self-help by refusing to comply with the instructions. There is no question in this industry but that employees must comply with properly directed orders and then pursue the established grievance procedure. Under the particular circumstances of this case, however, we find that the claim must be sustained.

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.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

5/28/91