

PUBLIC LAW BOARD NO. 4244

Award No. 206

Case No. 211

Parties to Dispute:

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

Claim on behalf of Central Region Trackman Truck/Driver J. T. Lenke, for all wage loss and/or made whole beginning April 23, 1996 forward for sixty (60) days (6-23-96), credit for all vacation time during the above-mentioned period, and expunge the sixty (60) day suspension from the Claimant's personal record.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved

in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

On April 23, 1996, the claimant, truck driver/trackman John T. Lenke, reported for a safety meeting scheduled for review of defensive driving, hazardous material communications, safety rules and back saver instructions. Each of the employees in attendance was required to sign a safety meeting attendance roster, and to print his or her name, together with a social security number. The instructor, safety assistant Lawrence Guerrero, notified the attendees at the commencement of the safety meeting of the need to correctly report their social security numbers on the attendance roster. The social security numbers are imputed into computers for tracking purposes -- to find out which training classes each employee has attended.

The claimant declined to complete the sign-in sheet. When it was discovered that the claimant had failed to sign or place his signature on the attendance roster, Guerrero announced to the safety class that those who declined to sign the roster would have to leave the class. The claimant testified that while he had no objection to signing the roster, he declined to provide his social security number, "because I have a very great concern about putting my social security number out into the public . . . unsupervised conditions such as this meeting, for financial reasons." (Tr. 17). He also stated that Guerrero told him either to write his social security number, and to print and sign his name, or not to sign the roster at

all. Guerrero denied that claimant offered any reason for his failure to provide his social security number, although the claimant did not otherwise refuse to participate in the safety class.

Gregory Old, a track foreman and claimant's supervisor, testified that he was in attendance at the safety meeting on April 23, 1996. Old verified that the entire class was directed to place their name, signature and social security number on the sign-in sheet. The claimant was twice instructed to sign the sheet, but declined to do so. According to Old, claimant offered no reason for his declination to provide the requested information. Track supervisor David Morris also was in attendance at the safety meeting, and he determined that the claimant had failed to sign-in after completing a head count of the attendees. Morris confirmed claimant declined to sign the meeting roster.

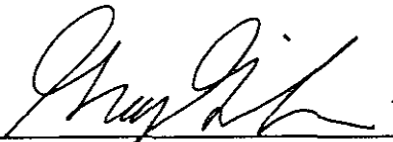
The roadmaster, Zenner, received a telephone call from Morris who relayed information concerning the claimant's refusal to provide his social security number. Zenner approached the claimant who had left the safety meeting, and offered to return him to the class if he would complete the Safety Meeting Attendance Roster, including providing his social security number. The claimant agreed to sign his name, but declined to write his social security number, citing concern that other individuals might access his bank accounts using his number. The claimant was immediately removed from service pending an investigation, and later received the sixty-day suspension on appeal before this Board.

The Board finds no support for the Organization's assertion that claimant was simply protecting his right not to divulge his social security number at the safety meeting. There is no evidence that claimant possessed any right to preclude the use of his social security number in the manner it was to be used in this case. The use of the claimant's social security number to track his attendance at the safety meetings appears to be a reasonable method to verify the completion of important tasks required of a large work force, and to ensure that each individual employee is properly credited with the necessary training. There was no evidence that claimant's bank accounts could have been accessed by the disclosure of his social security number, or that any Carrier official or employee had used the claimant's social security number in an improper or unlawful manner.

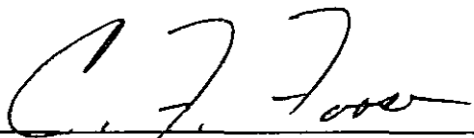
The Board concludes that claimant failed to comply with a proper instruction from his supervisors in violation of Rule 1.13. While claimant was offered a choice as to providing the requested information or having to leave the safety class, there is no credible basis to find, as suggested by the Organization during the investigation, that claimant's election to leave the class provided him with immunity from discipline for his refusal to comply. However, the Board determines that based upon all the facts and circumstances, a sixty-day suspension is excessive, punitive and unreasonable. The Board further notes the claimant's prior record which, since his date of hire in April 1972, contains one entry in October 1990 of ten demerits. Accordingly, the suspension is hereby reduced to ten calendar days, commencing April 23, 1996.

AWARD

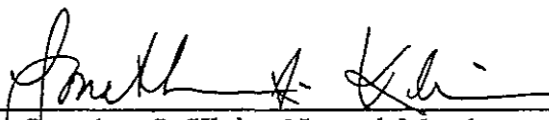
The claim is sustained, in part. Claimant's suspension is reduced to ten calendar days commencing April 23, 1986, and he shall be compensated for the net wage loss resulting from the balance of the sixty (60) day suspension within thirty (30) days of this Award.



Greg Griffin, Carrier Member



Clarence F. Foose, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 22 day of April, 1997.