

PUBLIC LAW BOARD NO. 4402

PARTIES)
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TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
 BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1. The forty-five (45) days of suspension imposed upon Machine Operators D. R. Koss and D. J. Deyo for alleged insubordination on September 20, 1984, was without just and reasonable cause and excessive (System File Reg. Gang/Gr. 10 DI - D. J. Deyo).
2. The claimants' records shall be cleared of the charge leveled against them, they shall be compensated for all wage loss suffered, including straight time and overtime, and they shall each receive a mileage allowance of twenty and one-half (20.5) cents per mile for mileage traveled in connection with their being withheld from service on September 20, 1984 (travel allowance of 20.5 cents per mile for traveling from their work location at Thornton, Wyoming to their respective residences) and for attending the investigation held on September 28, 1984 (travel allowance of 20.5 cents per mile for traveling from their respective residences to the investigation site, Moorcroft, Wyoming, and back).

OPINION OF BOARD

At the relevant time, Claimants were employed as Group 3 machine operators assigned to Tie Gang #2 at Thornton, Wyoming. According to testimony offered by the Carrier's witnesses, on September 20, 1984 Foreman R. L. Roskilly met in a bus with the machine operators including Claimants and handed the operators a letter from the Manager Region Gangs stating that hard hats and safety glasses were to be worn at all times while on duty. Roskilly told the employees to sign the letter indicating that they understood the contents. Only Claimants refused to sign. According to Roskilly, Claimant Koss stated that "he wasn't signing the fucking paper and that I wasn't his boss. He wadded it up and got off the bus." Further, according to Roskilly, in the process Koss called Roskilly "a Mother Fucker 2 or 3 times." Claimant Deyo stated that if Koss was not going to sign, then neither would he. Deyo also got off the bus and was swearing, albeit not directly at

Roskilly. Roskilly told Claimants to return to the bus. That instruction was not followed. Roskilly's testimony was essentially corroborated by Assistant Foreman R. G. Knox.

Claimants acknowledge that they were told to sign the letter and did not do so but deny using abusive language towards Roskilly and further deny that they refused to obey direct orders given to them. Claimants assert that they did not think they were required to sign the letter and merely left the bus to get clarification about the letter from Assistant Roadmaster Solano. According to Koss:

Q. Mr. Koss, why didn't you read this letter?

A. It was handed to me and I fairly well knew what it was and when it was handed to me I looked around and the group that I was setting at stated that I wonder what kind of bullshit this is now.

Q. Mr. Koss, did you sign this letter?

A. No, I didn't.

* * *

Q. Mr. Koss, did you have any remarks about the letter that you were asked to sign?

A. I stood up and after Mr. Roskilly had said that he had laborers that could do as good of a job as the machine operators out there I knew full well that there weren't any laborers that could run any of those machines as good as any one of the operators. I looked him straight in the eye and said we don't have to take this shit.

* * *

Q. Did you leave the bus ...?

A. Yes, I did.

* * *

Q. Mr. Koss did you have any comment to make to Mr. Roskilly at this time when you having a conversation with the Assistant Roadmaster?

A. Yes, I did.

- Q. Mr. Koss, could you relate into the transcript what this conversation was?
- A. I told Mr. Solano that we didn't have to take this stuff, we had been here working for him for 4 years and I thought that the paper was an unfair thing. I had been interrupted again by Mr. Roskilly and he stated that your out of service. I looked at him and called Mr. Roskilly a jerk.

As a result, Claimants were held out of service and thereafter were assessed 45 day suspensions for insubordination.

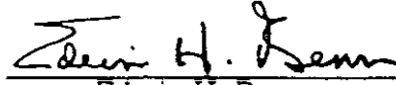
We are satisfied that substantial evidence in the record supports the Carrier's determination that Claimants were insubordinate. The record reveals that Claimants were instructed to sign the letter concerning the wearing of safety equipment, refused to do so, left the bus and in the process abusive language was used by both Claimants and directed towards Roskilly by Koss. On the basis of this record, the resolution of variances between the versions offered by the Carrier's witnesses and Claimants cannot be disturbed by this Board. However, even considering Claimants' versions of the event, Claimants were clearly told by Roskilly to sign the letter, they admittedly did not do so upon receipt of the instruction and thereafter left the bus. Thus, even under Claimants' versions of the events, we find insubordinate conduct has been demonstrated.

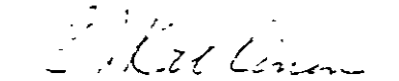
We find nothing sufficiently provocative in Roskilly's instructions to permit Claimants to refuse to perform as instructed. If Claimants questioned the propriety of signing the kind of letter tendered by Roskilly, their obligation was to perform the instruction and protest the matter later.

With respect to the degree of discipline imposed, under the circumstances we find nothing improper with the Carrier's actions of withholding Claimants from service. Further, we cannot say that a 45 day suspension was arbitrary or capricious.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

Denver, Colorado
August 11, 1989