

PUBLIC LAW BOARD NO. 5696

AWARD NO. 25

CASE NO. 25

BURLINGTON NORTHERN RAILROAD

PARTIES

TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when suspending Mr. T. D. VanOrsdol for five days for allegedly failing to comply with the instructions of his Supervisor when he took five (5) days vacation without receiving permission.

(2) As a consequence of the Carrier's violation referred to above, Claimant shall be paid for all time lost and the discipline shall be removed from his personal record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On February 27, 1995, Claimant was notified that he was being issued a 5 day suspension for being absent without authority and being

LABOR RELATIONS

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negligent in his conduct as a machine operator in violation of Operating Rules 1.6 and 1.15. The absence in issue occurred on February 21, 22 and 23, 1995. At that time Claimant was assigned to Gang TP-43 in Tulsa, Oklahoma under the supervision of Foreman Tom Greenwood and Roadmaster Rodney Dyche.

The March 17, 1995 investigation reveals that Claimant telephoned Greenwood at home during the evening of February 20, 1995, which was a holiday, and informed him that something personal had come up and that he needed a few days off. Claimant indicated that he would not be in the following two days. Claimant stated that he wanted to use vacation time. According to Greenwood, he told Claimant that he could not give him vacation time and that he needed to talk to Dyche about that. Greenwood recalled indicating to Claimant that if Claimant hadn't spoken with Dyche by the time he got in the next morning, he would tell him why Claimant was not there and that he wanted vacation. Greenwood testified that he instructed Claimant to call Dyche.

Claimant testified that when he told Greenwood that he wanted to take the time off as vacation, Greenwood asked if he had talked to Dyche, indicating that Dyche was not letting employees take vacation time unless it was scheduled. Claimant stated that Greenwood told him that he would run it by Dyche in the morning. Claimant testified that he did not call Dyche because of the harassment he gets when he does call him, and that he thought Greenwood was taking care of the situation since he did not hear back from him to the contrary the following day.

Greenwood informed Dyche the morning of February 21 that Claimant would be off the next two days and that he wanted vacation time

and was told to call Dyche. Dyche never heard from Claimant during the week of February 20, 1995.

Claimant next phoned Greenwood at the tool house at 6:45 a.m. on Thursday, February 23, 1995, indicating that he would not be in because his wife's car was broken down and he had to take it for repairs. When Claimant said that he needed another vacation day, Greenwood informed him that Dyche had not approved vacation time for the last two days and that he had to talk to Dyche about his vacation. According to Claimant, he intended to do so the following Monday when he reported to work, but was handed the suspension notice when he first came in.

Greenwood testified that some roadmasters let foremen grant time off but that Dyche said to have the men call him for permission to be off. He indicated that past practice was for roadmasters to let men take vacation time if they had to be off for a few days, but that Dyche had stated that vacation was only to be taken that year when it was scheduled. It is clear from the record that although Dyche asked all employees to submit their vacation request forms in November, 1994, and had reminded Claimant to submit such a form on three occasions, Claimant had not yet done so and had no vacation scheduled for 1995 at that time.

Dyche testified that an employee must call in and get proper authority to be off from either himself or the foreman. Dyche stated that Greenwood could allow Claimant time off but could not give him vacation because none was assigned to him. Dyche noted that Claimant did not call him to ask for vacation time even though his foreman told him to, and that is why he was given discipline for being off without authority. Dyche explained that the suspension was progressive discipline since Claimant

had already received a verbal and written reprimand for similar rules infractions in October, 1994.

Claimant testified that he always contacted his foreman first if he was taking time off, which is in compliance with the rules since his foreman is his immediate supervisor. Claimant also offered proof that he was getting his wife's car fixed on February 23, 1995. He admitted that he had not complied with Rule 1.13 by not turning in his vacation request form despite being asked to do so. It is undisputed that no one else in Claimant's gang was off or on vacation during the week of February 21, 1995. Dyche stated that he had granted employees vacation time off for personal reasons if they already had their vacation scheduled and there were no scheduling conflicts.

Carrier argues that the investigation supports its conclusion that the Claimant did not have proper permission to be absent from his duties on February 21 and 22, 1995 and did not follow proper procedures in requesting a change in his vacation scheduling. The Organization argues that Claimant properly called his foreman to notify him that he was going to be off during the week in question, and that since his foreman has authority to grant such time off, Claimant did not violated any rules by doing so. The Organization also contends that since no one else was off during that week, past practice establishes that Claimant should be permitted the time off as vacation. It requests that Claimant be compensated for the time off due to his suspension as well as being paid his vacation for the period of February 21-23, 1995.

A review of the entire record convinces us that Carrier has sustained its burden of proving by substantial evidence that Claimant did not have

proper authority to take vacation time off from February 21-23, 1995. There is no doubt from the investigation that Claimant was required to get vacation time approval directly from Dyche, and that he did not do so. Thus, the Organization's request that he be granted that time off as vacation time must be denied.

However, the record also establishes that Claimant followed routine procedure in notifying his immediate supervisor, Foreman Greenwood, that he would not be coming to work on February 21, 22 & 23, 1995 prior to the commencement of his scheduled shift. While Claimant and Greenwood gave a slightly different account of what was said during their February 20, 1995 conversation, it is clear that Greenwood told Claimant that he would inform Dyche that he would not be in and the reason. Claimant's evidence that Greenwood's insistence that he call Dyche was in reference to his request that the time off be approved as vacation time is consistent with Dyche's testimony that Greenwood had authority to grant Claimant time off but did not have authority to grant vacation time to an employee. Since Greenwood never indicated to Claimant during their telephone conversations that he must come to work and would not be granted any time off, and told Claimant that he would communicate his reasons for not being there to Dyche, it was reasonable for Claimant to assume that he had proper authority to be off on those dates.

Further, it is clear from the record that Carrier's decision to suspend Claimant was not based upon his failure to timely submit his vacation request form or any alleged violation of Rule 1.13. Under such circumstances, the Board cannot find that Carrier's decision to suspend Claimant for being off without proper authority is supported by substantial evidence. We will therefore direct that the suspension be removed from

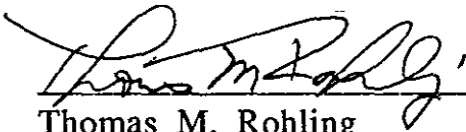
Claimant's file, and that he be compensated for any losses associated with it. As previously noted, Claimant did not seek proper approval for utilizing vacation time during his February 21-23 absence, so no adjustment to the scheduling of that time off as personal leave without pay will be made.

AWARD:

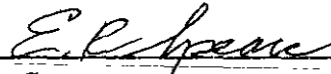
The claim is granted, in part. Carrier shall remove the 5 day suspension from Claimant's personal record and shall reimburse him for any losses associated therewith.



Margo R. Newman
Neutral Chairperson



Thomas M. Rohling
Carrier Member



E. R. Spears
Employee Member

Fort Worth, Texas
October 30, 1997