

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 32

PARTIES TO DISPUTE

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level S ninety (90) day Suspension for Central Region, Machine Operator R. L. Quattlebaum from service for ninety (90) days was unjust.
2. That the Carrier now rescind their decision and expunge the ninety (90) day Suspension and three (3) year probation period and pay for all wage loss as a result of an Investigation held 10:00 a.m., January 17, 1997 continuing forward and/or otherwise made whole, because the Carrier did not treat both Principals equally, plus the suspension from service as well as a three year probation period is extreme and harsh discipline.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On December 6, 1996, Claimant, after an outburst wherein he is alleged to have said "If I am the basis for everybody's problems, I might as well go home," abruptly departed a job briefing prior to its conclusion.

Claimant, however, did not go home, but remained on the property and did complete his work that day

Upon the conclusion of the job briefing, the Foreman went to the parking lot and spotted Claimant sitting in his truck. The Foreman approached the truck on the driver's side to talk with the Claimant to determine just what was the problem. An exchange of dialogue occurred, but just what was said by whom to whom is not quite clear. Claimant contends the Foreman asked him if he was going home, and Claimant responded negatively indicating he wanted to report the incident to Claimant's Supervisor. The Foreman stated he did then lose his cool and told the Claimant "to get his *** out of here" whereas the Claimant stated the Foreman called him a crybaby.

Claimant immediately backed his truck by turning the wheels to the right causing the Foreman to jump back to keep from being hit by the side mirror or the left front wheel. Claimant moved his truck a short distance, came to an abrupt stop, leaped out of the cab leaving the door open, and charged the Foreman with fist clenched and did butt the Foreman with his stomach while loudly declaring he was "tired of this ****" and he was tired of the favoritism. He then spotted another crew member and stated "I tired of you taking up for this."

The incident was reported and the Carrier ordered an investigation to determine what did actually happen and, if necessary, set in motion the disciplinary process.

Upon completion of the internal investigation, Carrier suspended Claimant at the close of business on December 10, 1996, pending the results of an investigation that was held on January 17, 1997.

Following a joint investigation of the Foreman and the Claimant, Carrier exonerated the Foreman, but believed it had established sufficient evidence of Claimant's culpability for the charges leveled and assessed Claimant a 90 day suspension which commenced retroactively to Claimant's first

day of suspension, December 11, 1996.

The Board has reviewed the investigation transcript and is convinced that what actually occurred was as outlined in the preceding paragraphs. Claimant, after a remark or two, did abruptly leave a job briefing before it was concluded. Claimant did drive his truck with reckless abandonment narrowly missing the Foreman, and that he did, indeed, bump his body against that of the Foreman. For these actions, discipline is warranted. The next step is to determine if the 90 day suspension was in keeping with the offense.

Claimant is a veteran employee of the Carrier since 1978, with a clear record up to 1987, but from then to present, Carrier has found it necessary to institute the disciplinary procedures five times, counting the present incident. Two of the earlier actions were prompted by negligence (which resulted in a 90 day suspension), once for dishonesty, and about one year ago, a deferred suspension for conduct unbecoming that was later reduced to a record mark by this Board.

Claimant's employment history, therefore, supports more severe discipline as Claimant has not accepted the fact that he must abide by the Rules.

Therefore, when coupling Claimant's disciplinary record with the facts of this case, the Board finds there are no mitigating factors that would cause this Board to lessen the discipline assessed by the Carrier.

AWARD

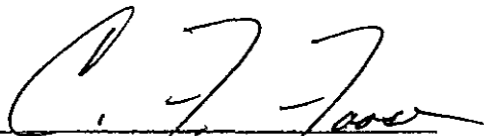
Claim denied.


ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award

favorable to the Claimant(s) not be made


Robert L. Hicks, Chairman & Neutral Member


C. F. Foose, Labor Member


Greg Griffin, Carrier Member

Dated April 1, 1997