

PUBLIC LAW BOARD NO. 6102

Award No. 8
Case No. 8

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Burlington Northern Santa Fe Railway
(Former St Louis - San Francisco Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the current Agreement when it unjustly suspended Mr. N. J. Thomason for five days for allegedly failing to comply with instructions and for allegedly being absent from work without proper authority.
2. As a consequence of the Carrier's violation referred to above, the discipline shall be removed from the Claimant's personal record and he shall be compensated for all wages lost." [Carrier's File MWC960624AA. Organization's File B-2504-1].

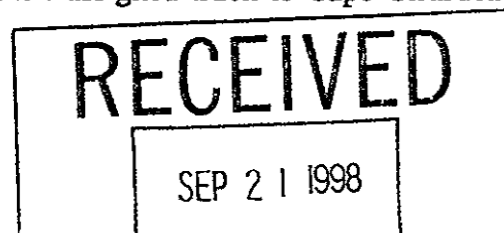
FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction over the dispute herein.

The Claimant, a Bridge & Building Foreman, was suspended for five (5) days for failure to report and comply with instructions from his Supervisor, and for being absent from duty without proper authority.

The record shows that the Claimant and his crew were working in the vicinity of Hayti, Missouri. When they went on duty at 7:00 a.m. on February 16, 1996, the weather conditions were icy. The crew was scheduled to work on a bridge, but the adverse weather and lack of dry material precluded carrying out their planned work. The Claimant conferred by telephone with his Structures Supervisor in Memphis, Tennessee, at 7:30 a.m., who instructed the Claimant to take his crew and their assigned truck to Cape Girardeau, Missouri, a distance of about 80 miles, obtain whatever material was needed, and work in the Cape Girardeau area for the balance of the day.

The Claimant did not explicitly refuse the orders, although he did point out that road conditions were icy north of New Madrid, Missouri. After concluding the telephone conference with the Structures Supervisor, the Claimant and his crew members decided that road conditions were too hazardous to risk taking their assigned truck to Cape Girardeau.



The record is not clear regarding what happened after that. According to the Structures Supervisor, the Claimant sent two of his crew members in a personally owned vehicle to Cape Girardeau, and the Claimant and the rest of his crew marked off for the day after working 1.5 hours. But the Claimant's testimony indicates the entire crew may have left Hayti at 8:30 a.m., traveled to Cape Girardeau in personal vehicles, loaded dry material and, finding no other work to do, quit for the day at 10:30 a.m. Since they had left their truck at 8:30, they decided to turn in only 1.5 hours, fearing that reporting longer hours may have laid them open to a charge of payroll falsification, according to the Claimant's account.

The Claimant admittedly made no attempt to notify the Structures Supervisor that the crew was marking off because of the inclement weather.

The Claimant's testimony that the roads were iced over when he conferred with the Structures Supervisor at 7:30 a.m. was confirmed by his crew's truck driver, who described an accident he and another employee observed while enroute to work that morning, caused by a truck skidding on an icy spot on Interstate 55. This witness told the Claimant that he felt it would be unsafe to drive their truck to Cape Girardeau that morning.

The Structures Supervisor stated that he left Memphis at 8:00 a.m., passed Hayti at 10:00 a.m., and arrived Cape Girardeau approximately 12:30 p.m., driving Interstate 55, and found the highway clear and dry and the sun was shining. He did not consider the driving conditions to be hazardous.

These accounts may not be as inconsistent as they appear. If the sun came out and the weather warmed, the road conditions may have improved markedly by the time the Structures Supervisor passed Hayti. Icing is often quite localized. Memphis is about 90 miles south of Hayti.

The Board finds there was compliance with the applicable provisions of Rule 91, the Discipline Rule, of the Agreement between the Parties, and substantial evidence was adduced at the investigation to support the charge that Claimant failed to report and comply with instructions from his Supervisor, and was absent from duty without proper authority.

Under the weather conditions which prevailed in Hayti at 7:30 a.m., the decision not to continue working may have been the safest course of action. The Carrier's rules place safety as the paramount consideration. "Safety is the most important element in performing job duties." (Safety Rule 1.1). "In case of doubt or uncertainty, take the safe course." (Safety Rule 1.1.1)

The Board finds, however, that the leading issue in this case is the Claimant's failure to apprise his Supervisor that the crew was quitting early. The Supervisor carried a pager

and his car was equipped with a cellular telephone. His office telephone had a recording device. He should have been notified, and this was acknowledged by the Claimant.

Had there been an emergency which required the services of the Claimant and his crew, no one in a managerial capacity could have known that they were not on duty at Cape Girardeau, as they had been directed.

If the Claimant had notified his Supervisor of the crew's intention to quit early, they might have been directed to other work, or counseled to wait and see if the weather conditions improved as the day wore on, which indeed seems to have occurred. The Structures Supervisor tentatively mentioned certain door framing work that might have been performed at Blytheville, Arkansas, but the Board believes there was no clear directive to the Claimant with respect to that particular task.

The Board finds that the Claimant failed to comply with Maintenance of Way Operating Rules 1.13 and 1.15, which read as follows:

"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction." [Rule 1.13]

"Employees must not leave their assignment, exchange duties, or allow others to fill their assignments without proper authority." [Rule 1.15]

The icy, snowy weather condition was a mitigating circumstance to a limited degree, in that it provided the impetus for the early quit. The Claimant was the Foreman in charge, but it seems he may have been unduly influenced by the apprehension of his crew and driver concerning the weather. The Board notes that he had been Foreman only two months. Perhaps with more experience he would have exercised better judgment under the circumstances of that day.

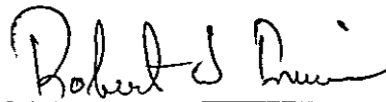
There was no falsification of time; indeed, it appears the crew actually worked more hours than were reported on the day in question, and claimed less than the minimum hours provided for in the Parties' Agreement when weather conditions prevent work from being performed.

During the appeal process on the property, an offer was made by the Carrier to reduce the five-day suspension to a one-day suspension. Clearly, neither this Board nor the Carrier is bound by a settlement proposal which is offered and refused. The Board, however, believes that a five-day suspension without pay is excessive, in light of the circumstances and the Claimant's past employment record.

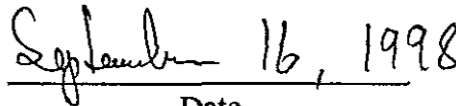
The Claimant's employment record has ambiguous entries with respect to this discipline case. He had some 2½ years' service on February 16, 1996. There are no disciplinary entries until the occurrence which is the subject of this Award. The work record states he was given a letter of censure for violation of Rules 1.13 and 1.15, and then given a five-day suspension for the same occurrence, characterized as a "second offense." Furthermore, the dates recorded are inconsistent with the investigation transcript, the payroll record, and relevant correspondence. The Board believes this is the Claimant's first offense, and that the discipline should be reduced to a one-day suspension without pay. Payment for the excess number of lost work days encompassed by this reduction shall be made within the time limit prescribed in the Award below. The Claimant's employment record should be amended to correct the erroneous entries referred to above.

AWARD

Claim sustained in accordance with the opinion. The Claimant shall be compensated in accordance with the opinion above within sixty (60) days from date of this Award.



Robert J. Irvin, Referee



Date