

PUBLIC LAW BOARD NO. 6102

Award No. 9

Case No. 9

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
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 suspending Mr. J. R. Taylor for three days beginning August 6, 1996, for allegedly being absent without first obtaining 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." [Carrier's File MWC961105AA. Organization's File B-2626-1].

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 Trackman headquartered at Amory, Mississippi, was suspended for three (3) days beginning August 6, 1996, when he absented himself from duty on August 5, 1996, without obtaining permission from proper authority.

The record in this matter indicates that the Claimant's track gang had worked seven straight days, including Saturday and Sunday, August 3 and 4, 1996. The weather was "extremely hot," and there were several references to the practice of taking frequent breaks when the weather is extremely hot and humid, and conflicting testimony as to whether adequate breaks were taken on the days immediately preceding August 5.

As the track gang was traveling in their truck at the close of the work day on Sunday, August 4, the Claimant told a fellow Trackman, who appeared as a witness, that he did not feel well, and if he did not feel better the next day, he wouldn't be at work. At this time, the truck was moving on the highway, with the windows up and the air conditioning on, according to this witness. The Claimant said the entire gang was within hearing range and he assumed that the Foreman overheard his comment, which was directed to the fellow worker. The Foreman stated that he did not overhear the Claimant.

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The record indicates a general understanding among the track gang employees that absences must be reported to and approved by the Roadmaster. The Foreman stated this to be true, and the policy was corroborated by the fellow Trackman who was called as a witness by the Claimant:

"134. Q. Mr. Bankhead, what is the policy, what is Roadmaster Honeycutt's policy on employees that want to lay off or not be at work? Does he have a set policy that everybody has to adhere to?

A. Yeah. He's strict on that policy.

135. Q. Would you, for our benefit give us the, state his policy as you best know it.

A. He wants you to notify him, or call in if you gonna be off or notify him the day before you gonna be off."

Even the Claimant admitted that he was aware that notification of intended absences must be reported to the Roadmaster, and simply advising the Foreman is insufficient notice:

"195. Q. So it's your testimony that you knew that if you just told the foreman in charge, without advising Mr. Honeycutt, getting his permission to be off absent from duty, you would still been sent home?

A. I was told any time I didn't call him, that I would be sent home."

Although the Claimant knew the Roadmaster's policy required personal notification when employees absent themselves from duty, the method of laying off he employed on Sunday, August 4 was by verbal communication with a fellow worker, with the expectation (1) that the Foreman would overhear the indirect communication, and (2) the Foreman would then take the initiative to notify the Roadmaster on his behalf.

A matter of this importance, failing to report to work on a work day, cannot be communicated through such a slipshod, indirect method. At the very least, the Claimant should have procured some acknowledgement from the Foreman that he heard and understood the Claimant's intention not to come to work on Monday, and that the Roadmaster would be notified, or that the Claimant would be put in touch with the Roadmaster.

The Claimant's and others' contentions that inadequate breaks were taken while working during the hot, humid weather does not really bear on the issue of whether the Claimant had proper permission to be off work. Even crediting these allegations as true, and

even if the Claimant was in danger of heat exhaustion, as he stated, there was no reason he could not have raised these concerns in direct verbal communication with the Foreman. Indeed, if his health was threatened, it would seem even more important to apprise the Foreman and/or the Roadmaster, so that prompt and proper medical attention could be given.

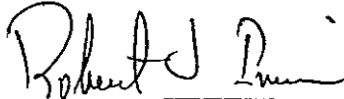
Two procedural issues raised during the investigation must be addressed. First, the Claimant's representative objected to the Roadmaster's appearance as a witness. When the investigation was scheduled, the Carrier listed two persons as witnesses, but did not specify the Roadmaster among them. The Claimant's representative complained that the Roadmaster's appearance was a surprise, and they were not prepared for him. The Board finds no provision in the Parties' Agreement which requires that all witnesses be listed in the notice of investigation. However, the Board believes that the Carrier's act of listing particular witnesses and omitting another is misleading and might be considered prejudicial in other circumstances. In any event, the Board finds there is sufficient evidence elsewhere in the record to support the charge, even if no credit is given to the Roadmaster's testimony.

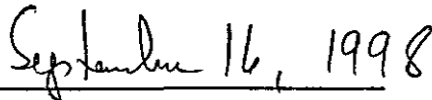
Second, the Claimant's representative objected to the reading of certain Maintenance of Way Operating Rules which were not listed in the notice of charges. The Board finds no procedural error in this particular case. Employees are deemed to have knowledge of the Rules which govern their employment. If unrelated Rules are raised for the first time during the course of the investigation, there might be merit to the objection, but not in this case.

The Board finds there was compliance with the applicable provisions of Rule 91, the Discipline Rule, of the Agreement between the Parties, substantial evidence was adduced at the investigation to support the charge that the Claimant was absent without permission, and the discipline assessed is not excessive.

AWARD

Claim denied.


Robert J. Irvin, Referee


Date