Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way Employees	)	
	)	
	)	
vs	)	**Case 29/Award 29**
	)	
Burlington Northern Santa Fe	)	

Statement of Claim

1. The dismissal of assistant foreman D. M. Dickmeyer for his alleged violations of Maintenance of Way Engineering Instructions Rules 15.12 and 15.7 and Maintenance of Way Operating Rules 1.6 and 1.19 on November 26, 2002 was without just and sufficient cause in violation of the Agreement, excessive and undue punishment.

2. As a consequence of the violation referred to in Part 1 above, assistant foreman D. M. Dickmeyer shall not be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Background

The Claimant was advised on September 2, 2002 to attend an investigation to determine facts and place responsibility, if any, in connection with a number of alleged dishonest acts involving his personal use of a Carrier leased vehicle and his alleged unauthorized use of the railroad's credit card on or about August 17, 2002 in the vicinity of Oxford, Nebraska. According to the investigation notice the Carrier first had information and knowledge of these alleged incidents on August 30, 2002.

An investigation was held on October 29, 2002 in Alliance, Nebraska. On November 26, 2002 the Claimant was advised by the Road Master working out of Broken

Bow, Nebraska that he had been found guilty as charged and that he was discharged from the service of the Carrier. Thereafter this discipline was appealed by the Organization in the proper manner under Section 3 of the Railway Labor Act and the operant labor Agreement up to and including the highest Carrier officer designated to hear such. Absent resolution of this appeal by the parties the instant case was docketed before this Public Law Board for final and binding adjudication.

Discussion

The record shows that the Claimant to this case was given a citation on June 12, 2002 for speeding while driving a BNSF vehicle. According to an investigation report filed with the Carrier by one of its special agents, the Claimant told the ticketing officer that he was on his way to feed some cattle and that he had grain in the back of the company pick-up truck for this purpose. At the time the Claimant was stopped he had a female companion in the truck with him as a passenger. According to this report the Claimant was arrested for an outstanding warrant for "insufficient fund checks".1

The report by the special agent also shows that on the dates of August 16-17, 2002 the Claimant used a company vehicle to tow a trailer to an Oxford, Nebraska sale barn. He transported 9 head of cattle to the barn in the trailer. The vehicle was unit B-4203 assigned to super surfacing gang 28. The vehicle was supposed to have been parked for that week-end while the gang was not working. Fueled was put in the vehicle on August

1 All citations here are from Employees' Exhibit A-5.

16, 2002,with the odometer showing 85,960, at Mullen, Nebraska. It was fueled again at Mullen on August 19, 2002 with the odometer showing 86,320. In both instances a company credit card was used to put fuel in the vehicle.

In testimony at the investigation the Claimant does not deny that he used a Carrier vehicle for personal use or that he used the credit card for fuel. According to his testimony at the investigation he used the vehicle because his own was in disrepair (transmission was out) and it was his view that this had been a "...practice of the gang...(for a week-end)...if a person had problems with a (personal) vehicle...". He states that his father had problems with some cattle which kept getting out of the fence and that he used the company vehicle to pull some of them in a trailer to the sale barn because he "...had no choice..." given the condition of his own vehicle and since his father had no way of hauling the cattle to the sale barn. The Claimant justifies his actions in his closing statement at the investigation wherein he states that it was his belief that his work and tenure with the company was sufficient for his actions to be viewed as a "...fair exchange..." given the "...situation at hand..." The Claimant's union representative also does not deny that the facts outlined above are basically correct. He does state, however, that what the Claimant did was a "...serious error of judgment..." The union representative observes that the "...stressful situation..." in the Claimant's life at the time might be viewed as a mitigating circumstance.

A review of the full record in this case does not persuade the Board that there was

not egregious violation of Carrier's rules.

The rules at bar are Rule 1.6, 1.19, 15.12 and 15.7. They state the following in pertinent part.

Rule 1.6

Employees must not be: 4. Dishonest.

Rule 1.19

Employees must not use railroad property for their personal use.

Rule 15.12

Personal use of company vehicles is prohibited.

Rule 15.7

Misuse of this credit card (Vehicle Fuel Credit Card – Wright Express) may subject an individual to prosecution, dismissal, or both.

Although there is testimony in the transcript of investigation by a supervisor about the proper application of the above cited rules, it is also clear that the Claimant, who has some considerable tenure with the company, ought to have known the meaning of the language of this written company policy which is neither unclear nor obtuse. The Claimant's testimony that it was common practice, in his estimation, for employees to use company vehicles for personal use on week-ends is directly contrary to the clear language of the rules themselves. Secondly, the Claimant's view that the company somehow owed him something beyond what it was contractually required to pay him and every other employee under labor contract in its employ is a notion that, on the face of it,

is simply incorrect. The consequences of such erroneous thinking would undermine the meaning and application of the labor Agreement. Both sides are required to do what the labor Agreement states: no more and no less. The implied just cause provisions in every labor Agreement dealing with discipline require that the written rules of the Carrier be followed. In the instant case this did not happen. Whatever other extenuating circumstances might be involved here the Board had no alternative but to deny the claim before it. To do otherwise would set precedent that would be unacceptable.

Award

The claim is denied

Edward L. Suntrup, Neutral Member

William A. Osborn

~~Thomas M. Robling~~, Carrier Member

Roy C. Robinson

Roy C. Robinson, Employee Member

Date: June 4, 2007