

PUBLIC LAW BOARD NO. 5814

Case No. 24
Award No. 24

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer D. E. Durtz for removal of discipline (15 day suspension) from his personal record and that he be made whole for all lost time.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

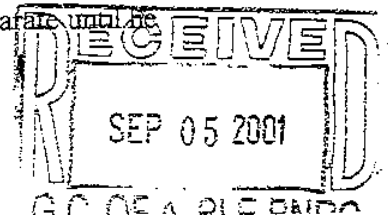
That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On December 16, 1995, Claimant was assigned as the Engineer of Work Train 53994. After completing this assignment, the Claimant entered the Delta Yard Office in Everett, Washington at around 5:45 p.m. and got into an argument with Yardmaster John McAlpine. The Claimant was upset that he and the two other members of the crew would be transported with their six grips to Tacoma in a small GEO Metro vehicle. The crew had requested that a long-haul shuttle van be made available to transport them to Tacoma. The Claimant blamed Yardmaster McAlpine for this mix-up.

Yardmaster McAlpine telephoned Trainmaster Latimer and asked him to come to the Delta Yard Office immediately since he and the Claimant were having a dispute. When he was on the telephone the Claimant attempted to interrupt the conversation. Trainmaster Latimer could hear them arguing and he ordered them to separate until they could get there.



When Trainmaster Latimer and Terminal Manager Hall arrived at the Delta Yard Office the Claimant and Yardmaster McAlpine were in separate rooms. They interviewed both employees and had them submit written statements. Both principals were cooperative. The Claimant and Yardmaster McAlpine were held out of service pending results of a formal investigation.

The Claimant and Yardmaster McAlpine were notified to attend an investigation to ascertain the facts and determine responsibility, if any, for their alleged involvement in a verbal and physical altercation in the Delta Yard Office on December 16, 1995. The investigation was held on December 22, 1995. On January 10, 1996, the Claimant was assessed a 15 day suspension for his reputed verbal altercation with Yardmaster McAlpine.

Under the circumstances of this case, the 15 day suspension assessed the Claimant was unwarranted, in the opinion of this Board. The Claimant candidly admitted that he had experienced a bad day as the Engineer of Work Train 53994 on December 16, 1995, and became angry when he learned that he and the other two members of the crew would be transported to Tacoma in a small vehicle. He blamed Yardmaster McAlpine for his inadequate transportation and engaged him in a verbal confrontation. He estimated that the whole dispute lasted about a minute.

Trainmaster Latimer agreed that the Claimant was cooperative when he interviewed him after his argument with Yardmaster McAlpine. The Claimant offered to apologize to Yardmaster McAlpine through Terminal Manager Hall. Yardmaster McAlpine stated that the Claimant never threatened him during their brief encounter. He said they merely had a misunderstanding and became upset at one another.

Clearly, the dispute between the two employees was brief and non-threatening. They simply had a misunderstanding over transportation back to Tacoma and briefly became angry at one another. Moreover, at the time of this incident, the Claimant had almost 19 years of service with a clear disciplinary record. In the light of all these circumstances, the 15 day suspension assessed the Claimant was unwarranted, in our view. At most, he should have been given a written warning for engaging in a verbal confrontation during which profanity was exchanged. Accordingly, the Claimant's 15 day suspension is ordered reduced to a written warning and he must be made whole for all time lost as a result of his unwarranted suspension on January 10, 1996.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective on or before thirty (30) days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Dated: 8/31/01