



**Public Law Board No. 6965**  
**Award No. 136**

The Claimant was assessed discipline of Time Served following a formal investigation in connection with the following:

...information received that on February 11, 2021, at approximately 2030 hours, while working at or near the Locomotive Shop, you were insubordinate when you refused to stay for overtime after being forced after the overtime list was exhausted, and all circumstances relating thereto.

At the formal investigation, Shop Supervisor Jones testified that on the subject date, there was a need to fill a vacancy on the third shift and in attempting to do so, he had exhausted the overtime list. Supervisor Jones stated that he then advised the Claimant, who was working second shift, that he would be forced to work four hours overtime on the third shift. Mr. Jones testified that the Claimant stated that he was not staying and that he didn't agree with forced overtime and when shown a copy of the agreement language regarding the assigning of overtime, the Claimant calmly stated "Thank you, I'm not staying." The record also indicates that shortly thereafter, the Claimant had a similar conversation with the Assistant Superintendent, where he was again advised that the forcing of the overtime was consistent with the agreement and the Claimant again replied that he was not staying to work the overtime.


When the Claimant testified at the investigation, he acknowledged that the testimony of Supervisor Jones and the Assistant Superintendent were accurate. When asked to explain his action, the Claimant stated that he had never been forced to work overtime in the past and he felt that being forced to work overtime was an infringement on his personal liberty. While the Board is not convinced that the Claimant's refusal rose to the level of insubordination as that term is generally defined in this industry; however, it is not disputed that the Claimant failed to work overtime after being advised to do so by his supervisors and improperly decided to leave after the end of his shift. If the Claimant honestly felt that the Carrier's action was improper, he should have worked the overtime and grieved later.

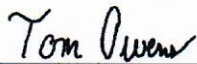
Relative to the discipline assessed in this case, the Board has taken into consideration the fact that the record indicates that while the Claimant improperly refused to work the overtime, his demeanor was calm and at no time was he loud or belligerent. Also, the Board has taken note of the fact that the Claimant had 22 years of service with the Carrier with an unblemished disciplinary record. Based on all the circumstances in this case, the Board finds that the discipline of thirty-eight (38) days' suspension was excessive and rules that the discipline should be reduced to a twenty (20) day actual suspension and the Claimant should be paid for time lost beyond the twenty days in accordance with the terms of the controlling agreement.


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AWARD

Claim sustained to the extent provided in the Findings. The Carrier is directed to make the Award effective within 30 days of the date of this Award.

  
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Joseph M. Fagnani, Neutral Member

  
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Tom Owens  
Employee Member

  
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John Ingoldsby  
Carrier Member

DATED: 08 / 31 / 2022