

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen & Oilers  
( Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer Gary W. Brentwood, Seattle, Washington, was unfairly dismissed from service of the Burlington Northern, Inc., effective November 14, 1978.
2. That, accordingly, the Burlington Northern, Inc. be ordered to make Mr. Gary W. Brentwood whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all time lost plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The facts in this case are not in particular dispute: the Claimant was employed and on duty as a Laborer at the Carrier's King Street Coach Yard at Seattle, Washington when, on August 30, 1978, he was arrested and removed from the property. As later events indicated, he was taken to jail where he remained until September 7, 1978. (According to the Organization, his arrest and detention was on the basis of delinquent parking tickets.) The record is clear that the Carrier received a call on August 31, 1978 from a female who apparently was the Claimant's sister who advised of his absence on that date due to "illness"; nothing further was heard from the Claimant relative to his status for September 1, 2, 5 or 6 -- all scheduled dates for duty. (The Claimant returned to duty at 4:00 p.m. on September 7, 1978 -- an hour after his regular starting time.)

The Claimant was suspended from duty on the charge of failure to protect his assignment for the August and September, 1978 dates heretofore mentioned, pending a hearing. As a result of the hearing he was dismissed on the charge of "disloyal and insubordinate conduct" relative to the absences from duty without proper authority

and failure to protect his position. Elements of prior discipline were purportedly considered in assessing the extent of discipline here.

There can be no doubt that the Claimant was absent or that he failed to protect his position. The record sufficiently supports his claim that he did not fabricate the basis for his absence; rather, it is clear enough that his sister took it upon herself to do so. What is evident to the Board, however, is that the Claimant left the Carrier unaware of his status beyond the point where it knew that he had been removed from the property and the call from his sister the following day. A reasonable argument might be made that the Carrier was not totally unaware of the Claimant's potential circumstances, but the obligation issues to the Claimant to bear the burden to ensure the opposite -- to make manifest just what his status was; he did not. It can be concluded, therefore, that the Claimant neither met the obligation to clarify his status or to protect his assignment.

The Carrier points to the Claimant's relative short service -- less than three years -- and prior suspensions for similar infractions as the bases to forego leniency in this case. We shall not disturb the Carrier's action here principally on the conclusion that the Claimant failed to exert a reasonable effort to clarify his status, thus leaving his position unprotected and the Carrier unaware of his availability. When coupled with a showing of prior similar offenses this leads to a conclusion of appropriateness of dismissal.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.