Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9066
Docket No. 9265
2-BN-CM-'82

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That the Burlington Northern, Inc. violated Rule 35 of our current Agreement when they suspended St. Cloud Carman Norbert E. Golembeski for a period of three (3) days commencing April 8, 1980.

2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Carman Norbert E. Golembeski in the amount of twenty-four (24) hours at the straight time rate for his rate and class for April 8, 9 and 10, 1980.

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.

Claimant was assessed a three (3) day suspension following a formal investigation on the charge that the Claimant violated Rule 667 of the Carrier. This rule outlines the procedure for employees to notify the Carrier in case of absences due to sickness. The record indicated that the Claimant stated during the investigation that he did not understand the requirements to call in daily, but that the rule requiring him to do so was not difficult to understand. The record also indicated that the Claimant admitted that he did not call in on the day in question.

To alleviate the problem with respect to absenteeism at the Carrier's facility, the Carrier established a requirement to have all employees report in, on a daily basis, to their foreman if they would be absent from duty. Claimant received a copy of the rule in December, 1979. The Board finds that this is not an unreasonable procedure and does not conflict with any Agreement rule.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.

LABOR MEMBER'S DISSENT TO

AWARD NO. 9066, DOCKET NO. 9265

Referee Hogan

The Majority erred in reaching a conclusion inconsistent with the facts of record. The Majority referred to Rule 667 which is a Carrier Safety Rule and further stated as follows:

> "...This rule outlines the procedure for employees to notify the Carrier in case of absences due to sickness...."

This is a gross misunderstanding on the Majority's part as Burlington Northern Safety Rule reads as follows:

> "667. Employees must comply with instructions from the proper authority..."

It is very apparent that the above quoted rule makes no requirement on Claimant's part to call in daily if sick. What the Carrier did was to issue a bulletin No. 329, dated August 10, 1979. You will note that the Carrier quotes Burlington Northern Safety Rule 665 and also Rule 16 of the Current Agreement. It is apparent that Rule 665 is not applicable in the instant dispute, assuming arguendo if it was applicable. We find no where in the Safety Rule No. 665 that would require the Claimant to call in daily. The facts are undisputed, the claimant called in sick on Friday, February 8, 1980 in compliance with Rule 16(e). On Monday, he called in before the end of the shift to report

that he would be back to work on Tuesday, February 12, 1980. This was in compliance with Rule 16(e). He was held off the job the 12th in lieu of getting a statement from the doctor. He did get a statement from the doctor that he was, in fact, sick. Further, the Majority never took into consideration that the Claimant called in Monday, February 11, 1980 to report for work on Tuesday, February 12, 1980. The Carrier denied him an opportunity to work by stating that he had to see a doctor before returning the 12th. He could not get an appointment with the doctor until 3:30 P.M. on February 12, 1980. He relayed this information back to the Carrier and it was agreeable with the Carrier that he would be absent February 12, 1980 with the Carrier's permission.

We call your attention to Page 12, where the Investigating Officer, Mr. Moline answers the Local Chairman's question in regard to a man having to report in every day in regard to the flu and he states as follows:

> "Unless the man knows that his flu is going to extend for two days, or three days, or four days..."

How does a man know how long the flu will hang on. It could be a day or a week or more and that is why we have Rule 16 (f) in the Current Agreement. How could the Majority disregard all schedule rules and instead hang their hat on Carrier's form SC-61 which is nothing more than a flexible tool in the hands of incompetent administrators who use it only on selective basis

for self serving purposes.

It was never brought to the General Chairman's attention nor did it have his authorization nor is there any place on this form that the Claimant or his Local Chairman signed showing that they received a copy of such form. Even if they did sign such form as being received by them, the Carrier circumvented Rule 16 of the Current Agreement. Further, such form SC-61, is nothing more than a self-serving statement by Mr. McClain or whoever would be in his position.

You will note that the Majority states in their last paragraph, reading as follows:

> "...The Carrier established a requirement to have all employees report in on a daily basis, to their foreman if they would be absent from duty...."

This is not a true statement and was addressed in Organization's submission on Page 7 that this so-called invalid Unilateral SC-61 Form was only imposed on a few employees.

Therefore, Award No. 9066 is palpably erroneous for the above stated reasons. Accordingly, the Labor Organization Members dissent:

J. C. Clementi

M. J. Cullen

D. A. Hampton

J. A. McAteer

R. A. Westbrook