

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 Inc.

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Gordon D. Teske, Stationary Engineer, Havre, Montana, was unfairly dealt with when suspended for a period of five (5) days of actual service from the Burlington Northern, Inc. on March 28, 1979 through April 1, 1979.
2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. Gordon Teske for all time lost at the pro rata rate and any reference to this incident stricken 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 employee or employees involved in this dispute are respectively carrier and employee 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 Claimant, a Stationary Engineer assigned to the 7:00 p.m. - 3:00 a.m. shift, absented himself from duty on February 9-11, 1979, which were regular work days, without prior approval to do so. Upon his return to duty, he offered as a reason, sickness for the period which confined him to bed; according to the Claimant, repeated efforts on his part to reach the Carrier over the three-day period were to no avail. At the investigation, the Claimant made proffer of various statements from friends and relatives attesting to his incapacity during this period. Testimony was adduced from his wife supporting this claim. A doctor's statement was also introduced dated "2/14/79" stating that "(Claimant) ill since 2/9/79; may return to work."

Such contentions are contrasted with testimony by the Claimant's supervisor that he was visited by the Claimant at around 4:00 p.m. on February 9, 1979 -- three (3) hours prior to the scheduled start of his shift -- at which time the Claimant asked for three (3) days off to go to a point several States distant to retrieve a pick-up truck. According to the supervisor, the request was denied, with the advice that such personal affairs be handled on his regular days off. Per the supervisor the Claimant gave no indication of not being well at the time, but did not appear for duty that evening nor the next two (2) days and did not

secure permission to be off. The Claimant refutes such testimony in part, contending that while the conversation took place, it was several days prior to February 9, 1979 and he agreed to conduct the personal business as the supervisor directed -- on his scheduled days off.

This Board is obliged to assess the validity of the Carrier's action in the quality of the evidence presented. We shall let such discipline stand on the multiple basis that the testimony offered by the supervisor as to the timing of the Claimant's request for days off was credible, and we note that the Claimant initially denied having made such request at all, but altered his testimony later. We also find beyond reasonable acceptance the Claimant's assertion that he was unable to reach the Carrier over a three-day period. The contradictory aspects of the Claimant's testimony undermined the quality of his contentions. We must look to the Carrier to meet the burden of proof that its actions were founded upon a reasonable showing of evidence. We conclude that it has.

A W A R D

Claim 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 27th day of May, 1981.