

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32990
Docket No. MW-33754
98-3-97-3-232**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railroad Company (former
(St. Louis - San Francisco Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman L. Manning for his alleged unauthorized absence on February 20 and 21, 1996 and for his responsibility and late reporting of a personal injury he sustained on February 15, 1996 was without just and sufficient cause and in violation of the Agreement (System File B-2585-1/MWC 96-07-09AA).**
- (2) Trackman L. Manning shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of this incident and he shall be compensated for all wage loss suffered.”**

FINDINGS:

The Third 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 were given due notice of hearing thereon.

Claimant had been an employee for more than 25 years. At all relevant times herein he was assigned as a Trackman on Extra Gang 142 at Hoxie, Arkansas. On February 15, 1995, while unloading a gondola car, the Claimant fell to the ground and hurt his back. He did not believe that he was injured enough to require medical treatment, and did advise his Supervisor that he was not injured. That evening the pain in his back worsened and the following day he was examined by a Physician. After he left his Physician's office he went to the Roadmaster's office. However, because the Roadmaster was not in, the Claimant left at the Roadmaster's office documents from his Physician which set forth the nature of his injury and that he was to follow weight restrictions with regard to lifting. The note from the Physician said nothing more with regard to the Claimant's ability to work. On the Claimant's next two days of duty, February 20 and 21, 1995 the Claimant did not report for duty. On February 22, 1995 the Claimant reported again to the Roadmaster's office to complete the necessary reports with regard to the accident. After doing so, the Roadmaster removed the Claimant from duty.

As a threshold matter the Organization contends that the Claimant did not receive a fair and impartial Hearing because the charge letter issued to the Claimant is not identical to the charges set forth at the dismissal Hearing. Although the Organization is factually correct in its contention we do not agree with its conclusion. The record is clear that the charge that the Claimant failed to report for duty is included in both the charge letter and was also made at the Hearing. Moreover, it is well-settled that failure to report for duty is a dismissible offense. Thus, without regard to the other charges set forth in the charge letter there can be no doubt that the Claimant was on notice at all times that he was being discharged at least for failing to report for work. Thus, the Claimant did indeed receive a fair and impartial Hearing.

With regard to the merits of the claim there is no doubt that the Claimant failed to report for duty on the days in question and that he did so without authority from the Carrier. The documents left from the Claimant's Physician provide no defense for the Claimant for nothing contained therein indicates that the Claimant was unable to work. Indeed, quite the opposite is true for the report from the physical only placed limitations on the Claimant's lifting abilities. Therefore, the Roadmaster could clearly expect that the Claimant would report for duty and when he did not, dismissal was appropriate.

Form 1
Page 3

Award No. 32990
Docket No. MW-33754
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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of December 1998.