

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34048
Docket No. SG-35546
00-3-99-3-463

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Santa Fe Railroad Company (former
(Burlington Northern Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Burlington Northern Railroad):

Claim on behalf of E.E. Taylor, for payment of all time lost and benefits and restoration of his seniority, as a result of his dismissal and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline without meeting the burden of proving its charges in connection with an investigation conducted on September 30, 1997. Carrier’s File No. SIA 98-03-05-AA. General Chairman’s File No. C-21-97(D). BRS File Case No. 10961-BN.”

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.

The Claimant in this case was dismissed from Carrier's service following a Hearing on the charge of ". . . alleged absenting yourself from duty without proper authority." The Claimant had been properly notified of the charge and the scheduled Hearing date. For reasons known only to the Claimant, he did not appear for the scheduled Hearing. The Organization representative did appear at the scheduled Hearing and took an active part in the Hearing. The Organization representative could offer no reason or explanation for the Claimant's failure to attend the Hearing. Therefore, the Hearing was conducted in absentia.

From the record there is no conflict of evidence. The testimony of those individuals who attended the Hearing is clear and supports the conclusion that the Claimant had not requested permission to be absent from duty. The on-property record of the case indicates that on at least two prior occasions the Claimant had previously been disciplined for being absent without permission. The instant case, therefore, is not an isolated incident.

The Organization's contention relative to the Claimant not receiving a fair and impartial Hearing is not well founded. It is a well-established principle that an employee cannot prevent the holding of a Hearing by the simple expedient of staying away when he had due notice of the Hearing. It is the Board's conclusion that when an employee fails to appear at a properly scheduled Hearing and offers no reason or explanation for not appearing he does so at his own peril. The holding of a Hearing in absentia under such circumstances does not create a situation where the Hearing is not fair and impartial.

On the basis of the record as it exists in this case, the position of the Organization is denied.

AWARD

Claim denied.

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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 25th day of May, 2000.