

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34979
Docket No. MW-33451
00-3-96-3-973**

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

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes**
(**(Burlington Northern Santa Fe Railway Company**
(**(former Burlington Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of employee F. Williams for alleged ‘ . . . violation of BN Maintenance of Way Operating Rule 1.15 for absenting yourself from duty without proper authority and Rule 1.13 for failure to comply with instructions from proper authority on September 29, 1994.’, was arbitrary and excessive (System File T-D-851-B/MWB 95-03-09AE BNR).**
- (2) The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charge leveled against him 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.

Prior to his dismissal from the service of the Carrier, the Claimant with over five years of service, had established and held seniority as an Assistant Foreman.

On September 29, 1994, the Claimant was assigned to work the 7:00 A.M. to 4:00 P.M. shift. He worked during the morning, but left the property without working during the afternoon of the shift. The Claimant informed two employees, Switch Maintenance Foreman T. W. O'Connor and Section Laborer T. E. Grant that he was leaving the property. Both O'Connor and Grant were not members of the Claimant's Section crew. The Claimant also told O'Connor and Grant to tell his own supervisor, J. W. Dise that he had left the property. Following the Investigation that was held on November 8, 1994, the Carrier found the Claimant's absence on September 29 to be unauthorized and in violation of the specific instructions which he was required to follow in reporting off. As a result, on December 1, 1994 the Claimant was dismissed from the service of the Carrier for absenting himself from duty without proper authority and for failure to comply with instructions from proper authority in violation of Rule 1.15 and 1.13 on September 29, 1994.

Rules 1.15 and 1.13 provide as follows:

"1.15 Duty--Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority."

"1.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction."

On September 29, 1994, W. A. Morris was the "supervisor" with proper jurisdiction for granting permission for reporting off, as provided in Rule 1.13. On the day in question the Claimant was serving as the Assistant Foreman to Dise and reporting directly to Dise. The record establishes that the Claimant did not ask permission to report off from Morris or Dise.

By requesting Grant and O'Connor to pass on his message that he was reporting off to Dise does not satisfy the requirements of Rules 1.15 and 1.13. They are members of a different crew than the Claimant's crew and are co-workers, rather than supervisors which is required under the Rules. Grant, in fact, was a Laborer with a lower rank than the Claimant. O'Connor was a Foreman of a Switch Maintenance Crew, which was not the Claimant's Crew. Moreover, it is reasonable to infer that the Claimant understood that O'Connor could not grant permission. Thus, he requested O'Connor to convey his message to Dise.

Both O'Connor and Grant were aware that the standard policy on the property was to notify the Roadmaster if an employee leaves his assignment. It is undisputed that the Claimant never asked the Roadmaster for permission to report off on September 29; nor did he request permission from Dise, his own Foreman.

On four different occasions, November 21, 1990 through July 18, 1994, the Claimant has been disciplined for being absent without proper authority. The discipline imposed his ranged from a written censure the first time he committed the offense, and subsequent suspensions of five, ten and 30 days for committing the same offense.

In light of the Claimant's disciplinary record for committing the offense of absenting himself from his assignment without proper authority, Morris had specifically instructed the Claimant that he must call the Roadmaster for permission to leave work. The Claimant acknowledged that the Roadmaster "may have discussed the Rules with him."

Morris testified that on previous occasions, the Claimant always contacted the Roadmaster directly whenever he wanted permission to leave his assignment. The Claimant did so within 30 days of September 29, 1994. Morris' testimony was not been refuted by the Claimant. Accordingly, the reasonable inference to be drawn is that the

Claimant knew the proper procedure to report off, but failed to follow the procedure on September 29, 1994.

The Organization refers to an inconsistency in the testimony of Dise and Morris in claiming that evidence was lacking to dismiss the Claimant. The record shows that Dise called Morris on two separate occasions on September 29. When Dise first called Morris, he did not know why the Claimant left work. He was then told by Grant that the Claimant had gone home. Subsequently, Dise found out that the Claimant left work because he had a headache which he passed on to Morris.

It is true that both Dise and Morris said they did not know why the Claimant left work. What they knew was based upon hearsay, rather than first hand knowledge. Such direct knowledge supports the Rule for reporting off to a supervisor having proper jurisdiction.

In reply to a hypothetical question raised at the Hearing, Morris said that he would probably have not charged the Claimant, had he reported off sick. The point to emphasize is that Dise could not verify that the Claimant did, in fact, report off sick because he left the property without obtaining permission from him to do so. Moreover, Morris had specifically counseled the Claimant with respect to the correct report off procedure. The Claimant should have been aware that if he resorted to any other arrangement of reporting off, such as leaving messages with co-workers who would relay such message to the Roadmaster, it would not comply with the proper procedure for reporting off.

There are various inconsistencies in the record including Grant's testimony with respect to where he spoke to Dise about the Claimant not feeling well; whether Grant told O'Connor the reason for the Claimant's absence; and by the Claimant himself as to whether the Carrier's policy required him to notify an "immediate supervisor" or to notify the Roadmaster directly. These inconsistencies tend to weaken and undermine the Claimant's case.

The Claimant stated that he was on light duty on September 29. He went on to state that in completing the type of work for which he was assigned during the afternoon of September 29, he would have "not been missed." Such an exercise of discretion by an employee, alone, would lead to chaos in the workplace. Moreover, the Claimant was on light duty for an injury unrelated to his headache, which was the

reason for his reporting off. The Claimant's assignment of light duty did not relieve him from the obligation to comply with the Rules with respect to reporting off.

The Claimant's past disciplinary record, which has been previously set forth, is of great weight in concluding that the Carrier's decision of dismissal is not to be disturbed.

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 20th day of September, 2000.