

PUBLIC LAW BOARD NO. 2206

AWARD NO. 16

CASE NO. 22

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension of Laborer S. Goodman effective October 18, 1977 was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 15-3 MW-20, 2/28/78A)
- (2) Laborer S. Goodman be paid for all time lost and his record be cleared."

OPINION OF BOARD:

Claimant was employed as a Section Laborer near Cicero, Illinois, with regular hours 7:30 a.m. to 4:00 p.m. On September 8, 1977 he told his Foreman that he had an appointment with the Company Doctor and asked permission to leave work. The Foreman granted permission but advised Claimant that he would have to present a certificate from the doctor if he wished to be paid for the time. As it turned out, Claimant did not have an appointment that day and the doctor could not see him that morning. He did, however, receive a slip verifying that he had appeared at the doctor's office. Claimant left the doctor's office at 11:00 a.m. but he did not return to work. Instead he conducted personal business for the rest of the day, calling on a Claim Agent and then going home.

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The following day, September 9, 1977, Claimant returned to work and that afternoon he was given Notice to attend an investigation into his absence on September 8, 1977. Following a hearing on September 20, 1977 Claimant was advised by letter dated October 17, 1977 as follows:

As a result of investigation accorded you on September 20, 1977, the following entry is being placed on your personal record suspending you from the services of the Burlington Northern, Inc. for a period of 30 days:

October 17, 1977. Suspended from the services of the Burlington Northern, Inc. for a period of thirty (30) days commencing Tuesday, October 18, 1977 to and including Wednesday, November 16, 1977, for violation of Rule 665 of the BN Safety Rules for being absent from duty without proper authority on the afternoon of Thursday, September 8, 1977, while assigned as Laborer, Surface Correction Gang #6, Cicero, Illinois.

In assessing this discipline, consideration was given to his previous rule violations of a similar nature.

Interviewed by the Assistant Superintendent and advised that if involved in a similar violation in the future it may result in the assessment of more drastic discipline.

In this claim the Organization seeks on Claimant's behalf to overturn the discipline on several grounds. We find no fatal procedural defect in the handling of the hearing and investigation nor in the appeals process. On the merits, the only real question is whether the Carrier acted arbitrarily or unreasonably in violation of Rule 15B by concluding that Claimant's absence was not authorized. Rule 15B does not give an employee carte blanche to demand leave of absence for any reason or no reason. Indeed, reasonable use of the right is an implicit quid pro quo for Carrier's express obligation to reasonably grant such leave under Rule 15B. It would appear that each such case must be judged ad hoc on its own merits.

In the particular circumstances of this case, including specifically Claimant's prior problems of absence without authority, we do not believe that the Foreman acted unreasonably in limiting and conditioning the authorized leave. Plainly, Claimant exceeded the bounds reasonably placed upon his authorized absence on September 8, 1977. Accordingly, we have no doubt that he was absent without authority on the afternoon of that day. In view of his prior poor record and the nature of his proven offense we find no viable basis upon which to reverse the disciplinary action of Carrier.

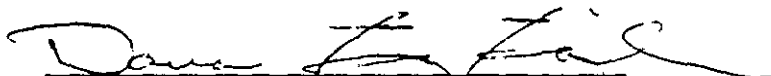
FINDINGS:


Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


F. H. Funk, Employee Member


L. K. Hall, Carrier Member

Date: Jan. 8/80