

PUBLIC LAW BOARD NO. 2206

AWARD NO. 76

CASE NO. 81

PARTIES TO DISPUTE:

BURLINGTON NORTHERN RAILROAD

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Section Laborer K. A. Froelick May 2, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File B-Y-138C).
2. Section Laborer K. A. Froelick be returned to service with all seniority unimpaired and paid for all time lost.

OPINION OF BOARD:

At the time of his dismissal Claimant was employed as a Sectionman on the Medora, North Dakota section. He had a seniority date of April 6, 1970.

On April 1, 1980 Carrier hand-delivered to Claimant a notice of investigation into charges of his failure to protect his assignment on March 25, 26, 27, 28 and 31, 1980. Following a formal investigation on April 8, 1980 at which Claimant failed to appear, he was found guilty of the charge and dismissed from service.

It is clear that Claimant did not show up for work on the days in question. The Organization does not dispute this and offers no valid excuse for his absence. The fact that he was incarcerated at the time can not be held to be a proper justification for his absence. See PLB 2206-3 and

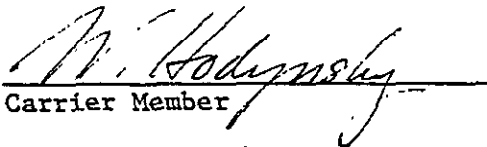
Awards 3-12992, 3-18816 and 3-19568. Consequently, Carrier was correct in assessing discipline for the absences.


The Organization contends, however, that Claimant was not given a fair and impartial investigation, thus invalidating the entire disciplinary action. We find no evidence in the record to support this contention. The mere fact that he was not present at the investigation following proper notice does not, without more, invalidate the procedure. There is no evidence that Carrier acted arbitrarily and capriciously in failing indefinitely to postpone Claimant's hearing. Carrier was under no obligation to await Claimant's uncertain release from incarceration to ascertain whether he failed to protect his assignment on the dates in question.

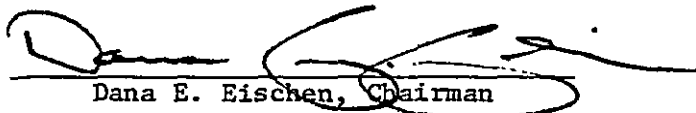
No valid justification was presented for Claimant's absence on the several days in March 1980. Given the nature of this proven offense and a poor prior discipline record, including previous suspensions without pay for absence without leave and failure to protect his assignment, we have no recourse but to deny this claim.

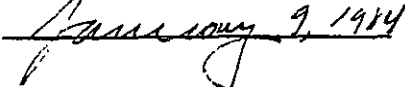
AWARD

Claim denied.


Carrier Member


Employee Member


Dana E. Eischen, Chairman

Date:  January 9, 1984