

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 12
CASE NO. 14

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) and
DISPUTE) FORT WORTH AND DENVER RAILWAY COMPANY

**STATEMENT
OF CLAIM:**

1. That the Carrier violated the Parties' Agreement, particularly Rule 26 thereof, when on October 1, 1981, they dismissed Trackman M. B. Phillips from service.
2. That Claimant M. B. Phillips be reinstated to the service with seniority, vacation and all other rights unimpaired and, additionally, he be compensated for loss of earnings suffered account the Carrier's improper action.

FINDINGS :

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Trackman M. B. Phillips, of the Fort Worth Division, on October 1, 1981, was "dismissed from the service of the Fort Worth and Denver Railway Company for violation of Rule(s) 665, 667 and General Rule C of the Burlington Northern Safety Rules (Form 15001 3/73) in connection with absenting himself from duty without proper authority on September 15, 1981 while employed as a Section Laborer at Fort Worth, Texas as evidenced by a formal investigation afforded him on Friday, September 25, (sic) 1981 at Fort Worth, Texas." The investigation date was actually Friday, September 23, 1981, and the record was subsequently corrected. The typographical error of date, it should be noted, was harmless, with all time-limit provisions of the Agreement being observed by the Carrier.

Claimant Trackman M. B. Phillips has admitted that he was absent from service on September 15, 1981 and that his absence was without prior permission from proper authority:

"Q. Mr. Phillips, were you scheduled to work on September 15, 1981?

A. Yes.

Q. Did you work on September 15, 1981?

A. No, I didn't.

Q. Did you speak personally with your foreman to be absent on September 15?

A. No.

Q. Did you speak personally with your assistant roadmaster to be absent on September 15?

A. No." (Tr., p. 7)

Rules 665, 667 and General Rule C of the Burlington Northern Safety Rules read:

665: EMPLOYEES MUST REPORT FOR DUTY AT THE DESIGNATED TIME AND PLACE. THEY MUST BE ALERT, ATTENTIVE AND DEVOTE THEMSELVES EXCLUSIVELY TO THE COMPANY'S SERVICE WHILE ON DUTY. THEY MUST NOT ABSENT THEMSELVES FROM DUTY, EXCHANGE DUTIES WITH OR SUBSTITUTE OTHERS IN THEIR PLACE WITHOUT PROPER AUTHORITY.

667: EMPLOYEES MUST COMPLY WITH INSTRUCTIONS FROM THE PROPER AUTHORITY.

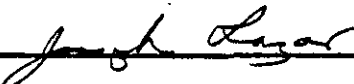
General Rule C: BURLINGTON NORTHERN SERVICE DEMANDS THE FAITHFUL, INTELLIGENT, COURTEOUS, AND SAFE DISCHARGE OF DUTY.

Absenteeism is a grave offense, and in a proper case may result in dismissal, especially where progressive discipline policy has been pursued by the Carrier and the employee has failed to correct his behavior. Uncontrolled absenteeism produces chaos and is not to be condoned.

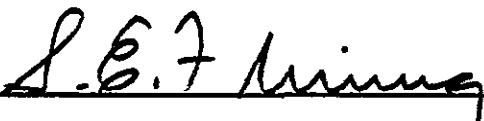
Mitigating factors, however, appear in the record. Claimant has testified: "...on the 15th when I missed I did try to call in. Jessie wasn't in. I didn't think to call Ross Freeze, but I did try to call Jessie and he wasn't in the office. He wasn't even in the yard at the time." (Tr., p. 9). Claimant's Foreman, Jessie Tubbs, testified: "My phone is unlisted, restricted." (Tr., p. 4). Accordingly, it is not manifestly clear that Claimant Phillips was able to reach his foreman to obtain proper authorization to be absent, nor is it clear that procedures and instructions were adequate, in the circumstances of this case, to enable Claimant to comply with the rules concerning absenteeism. In the opinion of the Board, these factors call for mitigation of the discipline.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The Carrier shall reinstate Claimant Trackman M. B. Phillips, but without pay for time lost.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



S. E. FLEMING, EMPLOYEE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983