

Joseph Lazar, Referee

PARTIES)
 TO)
 DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
 and
 FORT WORTH AND DENVER RAILWAY COMPANY

1. That the Carrier violated the Agreement when, as a result of an investigation conducted at Amarillo, Texas, August 11, 1981, they dismissed Trackman E. Savage, said dismissal being capricious, unjust and based upon unproven charges.
2. That Claimant E. Savage be reinstated to the service with seniority, vacation and all other rights unimpaired and, additionally, be compensated for loss of earnings suffered account the Carrier's improper action.

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.

Claimant Trackman Elroy Savage, a Section Laborer on Amarillo Section Gang 14-A, Amarillo, Texas, was dismissed from the service of the Fort Worth and Denver Railway Company for violation of Rule 665 of the Burlington Northern Safety Rules in connection with his failure to report for duty on July 31, 1981 as evidenced by a formal investigation conducted on August 11, 1981. Claimant was dismissed from service on September 1, 1981.

At 9:55 p.m., July 30, 1981 Claimant was involved in an automobile accident. (Carrier's Exhibit 4, "Police Report of Automobile Accident"). The Emergency Receiving Center of the Amarillo Hospital District billed Claimant for services, carrying date of 7/30/81. (Organization Exhibit 5th attachment).

The Organization, in its submission, states: "On the following morning, July 31, while Claimant was still confined to the hospital, Claimant's wife called his Supervisor to advise him that Claimant would be unable to report for work that day. July 31, 1981 was also the last day Claimant had to exercise displacement rights on another position and Claimant, desiring to preserve such rights to the new assignment, placed a telephone call on July 31, 1981 to Roadmaster C. L. Brotherton, explained to him his predicament and his inability to protect the assignment or exercise his displacement.

"Roadmaster Brotherton advised Claimant that he would be placed on a sick leave and his seniority rights would be protected."

On October 26, 1981, the Organization submitted the instant claim to the Carrier (Carrier's Exhibit No. 3(a)), stating in part: "The claimant was not absent from duty without authority on July 31, 1981 as carrier alleges. He was on sick leave, which his foreman was notified of as was General Roadmaster Brotherton."

At no time has the Carrier denied the statement that Claimant notified General Roadmaster Brotherton of his inability to protect the assignment. The record of the Investigation, conducted on August 11, 1981, shows that Claimant's foreman, Mr. W. A. Cunningham, did not testify, although the record of the Investigation shows a wire signed by Mr. Cunningham stating that Claimant was absent on 7/31/81 without authority. There remains a question whether Mr. Cunningham was or was not notified by Claimant's wife on the morning of July 31, 1981.

The record shows that notice of investigation was delivered to Claimant on August 4, 1981 and was personally signed by Claimant on that date. (Carrier's Exhibit No. 2). The Organization states: "Claimant, still suffering from the injuries sustained in the accident and relying on his conversation with Roadmaster Brotherton in which he was assured of a leave of absence, did not appear at the time, date and place the hearing was scheduled." (Page 2 of Submission). On the date of the Investigation, August 11, 1981, the record shows that Claimant made an office visit to his Doctor and was billed for

medical services that date in an amount of \$366. (Organization Exhibit 6th Attachment).


Absent denial of Claimant's assertions of conversation with General Roadmaster Brotherton on July 31, 1981, and considering the medical records of record, the Board determines that a finding by the Carrier of violation of Rule 665 by Claimant on July 31, 1981 is not warranted.

Claimant, however, was apprized of the fact that he was going to be investigated for the absence of July 31. On August 4, he signed written acknowledgement of the notice of investigation to be held on August 11, 1981. He should have realized at the time of the notice that problems and questions existed about his absence on July 31, and he should have realized that there might exist some misunderstanding or failure of communication concerning his telephone conversation with the General Roadmaster. When he received the notice of investigation, he should not have remained silent and inactive. His job was at stake and he should have been in touch right then with the Organization and the Carrier. This he failed to do.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The Carrier shall reinstate Claimant Elroy Savage, 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