

Joseph Lazar, Referee

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO ) and  
DISPUTE ) BURLINGTON NORTHERN RAILROAD (Former Fort Worth  
and Denver Railway Company)

1. That the Carrier violated the provisions of the current Agreement when it suspended Trackman Mr. Larry Rasco for a period of thirty (30) days without first according claimant a fair and impartial investigation, said action being arbitrary, capricious and in abuse of discretion.

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 Larry Rasco, an employee of this Carrier since September 26, 1979, was on October 21, 1982, notified of "suspension for 30 days from the service of the Fort Worth and Denver Railway Company for violation of Rule 570 of the Burlington Northern Safety Rules and General Rules, in connection with your absenting yourself from duty without proper authority on September 27, 1982, while employed on Extra Gang No. One, as evidenced by a formal investigation afforded you October 6, 1982, Fort Worth, Texas."

Rule 570 of the Burlington Northern Safety Rules and General Rules, Form 15001, August 81, reads:

"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."

The transcript of investigation shows the following answers by the Claimant:

"Q. Did you work on September 27, 1982?

A. No sir, I didn't.

Q. Did you secure permission from the Assistant Foreman, or anybody, to be absent?

A. No sir."

It is admitted that Claimant did not work on September 27, 1982 and did not obtain permission to be absent.

Claimant testified that on September 27, "I did call in, but I didn't know where anybody was at. I didn't get the information Donnie (the Assistant Roadmaster) gave the Extra Gang. I was not there or something. I didn't know how to get in touch with anyone. I did make a couple of attempts to call the Main Offices, but I failed. No one was there so I couldn't get in touch. Finally later, I did leave a message with someone." (Tr., p.3)

The Assistant Roadmaster, in response to the question: "Is it relatively easy to contact you or someone else?" stated: "Yes. I have given my number, and the hours I will be at the Bristol International, and if not reached that way, they can call the Decatur Depot and reach me via radio. They were all given instructions. All employees of Extra Gang No. 1 were given these instructions." (Tr., p. 2).

The record further shows the following:

"Q. Well, September 28th, did you get in touch with someone at North Yard to give the message to Hancock?

A. Ugh, I got in touch with someone. I left a message with someone...

Q. Well, you got in touch with North Yard on September 28th at 1:30 P.M. Do you understand that the Yard Office at North Yard is a 24 hour station?

A. No sir, I didn't. I do need to get all that information from my Assistant Roadmaster. I didn't have it. I didn't know how to get in touch.

Q. Do you know your Roadmaster's name?

A. Yes sir.

Q. Did you check information at Wichita Falls for his phone number?

A. No sir." (Tr., p. 4)

"Q. Do you live at Childress, Texas?

A. Yes sir.

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Q. Are you aware that Assistant Roadmaster Hancock lives at Childress?

A. Yes sir.

Q. Did you make any attempt to contact him the weekend of the 25th or 26th?

A. No sir." (Tr., p. 5).

The evidence of record shows, in letter of December 17, 1982, to the Organization, (Carrier's Exhibit No. 4), that

"Mr. Rasco's service record is punctuated with discipline for not complying with Carrier's rules concerning absence without proper authority. September 30, 1981, he was censured for violation of Rule 665; November 2, 1981, he was suspended for five days for violation of Rule 570; April 29, 1982, he was given 15-day suspension, for Rule 570, and September 9, 1982, received actual 15-day suspension for violating Rule 570, all in addition to his 30-day suspension of October 21, 1982."

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. The testimony of the Assistant Roadmaster reflects the existence of adequate procedures and instructions to all employees in Extra Gang No. 1, including Claimant, to enable Claimant to comply with the rules concerning absenteeism. The employee has a reasonable responsibility to become informed and to exercise reasonable efforts in complying with the rules concerning absenteeism. Failure to exercise reasonable care and effort by the employee subjects him to the foreseeable consequences of discipline. Here, the Claimant was censured, warned, suspended, and disciplined for failure to comply with the rules concerning absenteeism. The Carrier made it plain and clear to him, through progressive discipline, that his violations would not be tolerated. The Claimant, apparently, has failed to understand the seriousness of his violation.

The Board cannot find merit in the Claimant's argument that the dental surgery required about the time and performed on September 29, 1982 (Employee Exhibit A-2) excuses or mitigates Claimant's violation of Rule 570. There was no medical emergency or medical condition within the provisions of Rule 30 (c), in the facts and circumstances of the instant case, justifying Claimant's failure to comply with Rule 570. There is no showing why Claimant could successfully communicate with the Carrier on September 28 but could not do so on September 27 or prior thereto.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.

  
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JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
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C. F. FOOSE, EMPLOYEE MEMBER

  
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B. J. MASON, CARRIER MEMBER

DATED: \_\_\_\_\_