

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 27

CASE NO. 36

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

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when it suspended Trackman M. B. Phillips for a period of thirty (30) days commencing June 11, 1984, inclusive, for allegedly being absent without proper authority on April 30, 1984.
2. That the Carrier shall now be required to compensate Claimant for all wage loss suffered and his record shall be cleared of all charges.

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 employe and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Claimant M. B. Phillips, with seniority date of May 15, 1978, was assigned as a Trackman working on Extra Gang #1 near Tascosa, Texas on April 30, 1984. On June 5, 1984, Claimant was advised by Carrier: "This is to advise you that an entry is being placed on your personal record and you are being suspended from service of the Burlington Northern Railroad Company for thirty (30) days from 12:01 A.M., June 11, 1984 to 11:59 P.M., July 10, 1984, inclusive, for violating Rule 570 of the Burlington Northern Safety Rules Book for your failure to obtain permission prior to absenting yourself from duty on April 30, 1984, as established in investigation afforded you on May 17, 1984."

reads: Rule 570 of the Burlington Northern Safety Rules

"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 Claimant's Foreman:

- "Q. If a member of your gang was to want or need to be absent from duty would you be the proper authority for him to obtain permission to be absent?
A. Yes, sir.
- Q. Do you allow the trackmen under your supervision to be off when necessary if your workload permits?
A. Yes, sir.
- Q. Have you in the past excused or allowed trackmen to be absent when they requested permission to absent themselves for personal reasons?
A. Yes, sir.
- Q. A trackman under your supervision must come through you to obtain permission to be off. Is this correct?
A. Yes, sir.
- Q. On April 30th, did Mr. Phillips contact you in any way requesting permission to be absent?
A. No, sir.
- Q. Did Mr. Phillips report at the designated time or any time during the day of April 30th to you?
A. No, sir.
- Q. And you had no contact at all during the day or anytime during the day on the 30th, with Mr. Phillips?
A. No, sir." (Tr., p. 3)

The Transcript of Investigation shows the following answers given by Claimant Phillips:

"Q. Okay. Mr. Sanders, did you report to work on April 30, 1984. Phillips I mean, I'm sorry.

A. No.

Q. Have you ever in the past needed to be absent, contacted your Foreman and been issued or given permission to be absent?

A. Yes.

Q. Has the Foreman in the past given you permission as you requested it, it it was at all possible for him to do so?

A. Yes, he did." (Tr., p. 6).

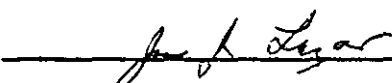
The evidence of record is beyond dispute that Claimant was absent without authority on April 30, 1984.

The Employees Statement of Facts presents the following explanation for Claimant's absence: "Claimant's assignment on Extra Gang #1 required him to work away from his home throughout the workweek and obtain lodging in hotels and meals at restaurants. During the hearing, Claimant offered a rather convincing and plausible explanation for his being unable to cover his assignment on Monday, April 30, 1984. He explained that his home was in Fort Worth, Texas and on Sunday, April 29, 1984 he was required to drive to Amarillo, Texas which is a distance of 386 miles and he was extremely tired, in addition to being ill and did not feel that he could properly fill his assignment on the date in question. Apparently the majority of Extra Gang #1 was staying at the same motel in Amarillo, Texas which is presumably the nearest motel to the work location. Although Claimant's hours are 8:00 AM to 4:30 PM, the Foreman of Extra Gang #1, Mr. J. W. Moss, testified that he left Amarillo at approximately 7:00 AM, which would allow him 45 minutes to travel and an additional 20 minutes to get the flagging equipment in place. Therefore, it would be reasonable to assume that from the time the Foreman left the motel to obtain his morning meal, the men working under his supervision would be unable to contact him subsequent to 6:30 AM. Thus, on the date in question, Claimant arrived at the motel in Amarillo at approximately 7:15 or 7:20, which was after the Foreman had departed that location and in turn making it impossible to contact the Foreman to obtain permission to absent himself from his assignment on that date. Nevertheless, Claimant did exercise prudent judgement and contacted the Gang Timekeeper who was still at the motel and requested that the Timekeeper deliver the message to Foreman Moss."

The Board has carefully considered the question whether Claimant was simply a victim of circumstances in which he had no control whatsoever. The argument is persuasive if the time when Claimant arrived at his motel, 7:15 or 7:20, is deemed to govern. It must be noted, however, that Claimant's starting time at the work site, some 50 miles away, was 8:00 AM, and it is apparent that Claimant would have arrived there after the starting time, if he had made the effort. It is clear, however, that Claimant must have been aware of the fact that he would be tired by 8:00 AM after driving some 350 to 400 miles from his home in Fort Worth. Obviously, Claimant put himself at some risk by leaving his home to drive to Amarillo when he did. This was not prudent judgment, especially for an employee with a past record of excessive absenteeism. The Board has further considered the allegation that Claimant may have been suffering from some sort of illness which could impair the safety and welfare of Claimant and his fellow employees if he had gone on to work. On close examination of the Transcript of Investigation, the Board has not been able to find evidence to support such an allegation of sickness. In the light of the facts of record in this particular case, the Board is unable to accept the view that Claimant was simply a victim of circumstances in which he had no control whatsoever. When account is taken of the Claimant's past record of absenteeism, the discipline here is not excessive.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman M. B. Phillips is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


C. F. FOOSE, EMPLOYEE MEMBER


L. MARES, CARRIER MEMBER

DATED: December 17, 1985

