

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 10
CASE NO. 10

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
BURLINGTON NORTHERN (Former Joint Texas Division)

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when they suspended Claimant J. E. Grayson for a period of five (5) working days, said suspension being excessive, capricious, and unjust.
2. That Claimant J. E. Grayson be compensated for five (5) days' wage loss suffered account the Carrier's wrongful 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.

By letter of July 12, 1982, Claimant J. E. Grayson was notified of "suspension from the service of Fort Worth and Denver Railway Company for five (5) days, for violation of Burlington Northern Safety Rule 570, in connection with your absence without authority from your position as trackman on June 30, 1982, as evidenced by formal investigation afforded you on July 8, 1982, at Teague, Texas."

BN Safety Rules and General Rules, Form 15001, Rule 570 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 given by Claimant J. E. Grayson:

- Q. Would you please state your full name, occupation and length of service?
- A. James Edward Grayson, laborer, four years and about six months service.
- Q. On Wednesday, June 30, 1982 were you assigned to the position of trackman Section W-109, Teague, Texas?
- A. Yes, sir.
- Q. On that day was your foreman Mr. James Grayson?
- A. Yes.
- Q. On Wednesday, June 30, 1982 was your assignment to have worked with other members of the Teague section or were you assigned to other duties?
- A. Other duties.
- Q. What were they?
- A. Bolt tightening machine.
- Q. At what location?
- A. Between Newby and Donie.
- Q. Who was your supervisor while performing that occupation?
- A. Elmer Jean Grayson, track supervisor.
- Q. Were you absent from your position on Wednesday, June 30, 1982?
- A. Yes, sir.
- Q. Did you have authority to be absent?
- A. Yes, sir.
- Q. And from whom did you obtain that authority?
- A. Preston Johnson. I asked him to notify Elmer Jean Grayson, supervisor, because I couldn't get in touch with him at the time. I didn't know his phone number.
- Q. Did Mr. Johnson actually grant you authority to be absent from your position Wednesday, June 30, 1982, or did Mr. Johnson relay authority from track supervisor E. J. Grayson for you to be absent?
- A. He said he would tell Elmer Jean, evidently he didn't because he couldn't get in touch with him.
- ****
- Q. On Wednesday, June 30, 1982, when you were absent from your position were you in compliance with Rule 570? On that date did you have have authority to be absent?
- A. I thought I did, but I didn't." (Tr., pp. 8-9).

Foreman Preston Johnson gives the following testimony:

- "Q. Mr. Johnson, would you please state your full name, occupation and length of service?
- A. Preston Johnson, foreman, Normangee, W-106, occupation foreman, and I have 36½ years service.
- Q. On Wednesday, June 30, 1982, trackman J.E. Grayson was absent from his position of trackman, Section W-109, Teague, Texas. Do you have any knowledge of Mr. J.E. Grayson's absence or did Mr. J.E. Grayson contact you in any way seeking permission to be absent?
- A. He called me the 29th at 10:00 p.m., and told me to tell Elmer Jean he wanted to be off to tend to some business on the 30th. I believe Elmer Jean was in Conroe and I couldn't call him that night because I didn't know his phone number, but he did call me the 29th at 10:00 p.m.
- Q. What was the reason for Mr. J.E. Grayson requesting permission?
- A. He told me motor filter on his car was under a guarantee and he said if he kept driving it and not get it fixed, he would have to pay for it himself. They had done told him to bring it in and the man would pay for it, and that is what he told me.
- Q. Was Mr. J.E. Grayson's phone call to you in the nature of a request to be absent or in the nature of advising you to get word to his foreman that he would be absent?
- A. He wanted to request to get word to Elmer Jean.
- Q. Referring to Elmer Jean you mean Mr. E. J. Grayson, the track supervisor for that territory?
- A. Yes, sir.
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- Q. (By Mr. J. W. Keefer, System Representative, BMW) Mr. Johnson, do you know if Mr. J.E. Grayson, when he got in contact with you by phone, did he tell you that he had tried to call Elmer Jean's number and kept getting a busy signal?
- A. Yes, he told me that." (Tr., pp. 6-7).

The evidence of record is clear that Claimant did not attempt to obtain authorization for his absence on June 30, 1982 until 10:00 p.m. on June 29th. When Claimant spoke to Mr. Johnson, he understood that it was necessary to obtain authorization from Mr. E. J. Grayson, the track supervisor, and the Claimant understood that Mr. Johnson, foreman, Normangee, W-106, was not in position to authorize Claimant's absence on June 30.

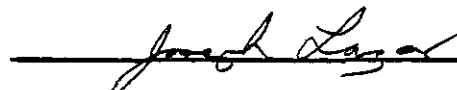
There is some question whether Claimant in fact did call "Elmer Jean's number and kept getting a busy signal" or whether Claimant did not in fact call Elmer Jean because he "didn't know his phone number" (Tr., p.8).


The Board finds, on the evidence before it, that Claimant made his efforts to obtain authorization for absence on June 30, 1982 at the late hour of 10:00 p.m. on June 29. Claimant was unsuccessful in his efforts. He knew that "proper authority" under Rule 570, in the circumstances, was Elmer Jean Grayson, the track supervisor. Claimant had the choice of not absenteeing himself on June 30, or taking a chance that Mr. Johnson, like Claimant, might not be able to reach Elmer Jean Grayson and obtain the required authorization. Claimant could not, under Rule 570, in the circumstances of record, completely remove himself from the application of Rule 570 by calling Mr. Johnson and expect Mr. Johnson to satisfy Claimant's responsibility. Perhaps it would have been wiser for Mr. Johnson to have made this plain and clear to Claimant and to tell Claimant that he was taking a risk; but Claimant should have fully realized this, nonetheless.


In the circumstances, was the discipline given to Claimant, of five (5) days' suspension, excessive? Absenteeism is a serious offense, and in a proper case may result in dismissal of an employee. The record shows that Claimant's work record contained censure for violation of Burlington Northern Safety Rule 665 and 30-day suspension for violations of Rules 661 and 665. The Carrier gave Claimant the five (5) day suspension in the instant matter, and not a more severe discipline, in recognition of Claimant's efforts to obtain proper authorization for his absence on June 30, 1982. In the circumstances, the five (5) day suspension was not arbitrary nor excessive.

A W A R D

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


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983