

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 18  
CASE NO. 19

PARTIES )  
TO )  
DISPUTE )  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
AND  
BURLINGTON NORTHERN RAILROAD (Former Joint  
Texas Division)

STATEMENT  
OF CLAIM:

1. That the Carrier violated the Agreement when it suspended Track Laborer Mr. A. P. Mims for a period of thirty (30) days commencing July 1, 1984 through July 30, 1984, said action being excessive and in abuse of discretion.
2. That the Carrier will now compensate Claimant for all wage loss suffered and his record shall be cleared of all charges.

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 A. P. Mims was a regularly assigned Section Laborer with headquarters at Corsicana, Texas. He has an employment date with Carrier of June 6, 1980. On June 21, 1984, the Carrier advised Claimant "that a letter of discipline is being placed on your personnel file, and you will be suspended from service with the Burlington Northern Railroad beginning on July 1, 1984 and ending on July 30, 1984, inclusive for violation of Rule 570 of the Burlington Northern Safety Rule Book for failure to obtain authority prior to absenting yourself from duty on April 29 and May 3, 1984, while working as Section Laborer near Corsicana, Texas."

Rule 570 of the Burlington Northern Safety Rules  
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."

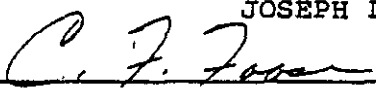
Claimant admits that he did not request permission to be absent on Sunday, April 29, 1984. (Tr., p.12). An initial confusion in the record was whether Claimant requested permission for his absence of May 3 or for his subsequent absence on Friday, May 11. This was clarified by Claimant's testimony, in response to the question: "Are you saying now that the 11th is the day that you called in and talked with Mr. Polk? A: It was on a Friday." (Tr., p. 12). The record establishes without doubt that Claimant did not request permission for his absences of May 3 or April 29.

Claimant's assigned workweek was Monday through Friday, with Saturdays and Sundays as rest days. Claimant's Supervisor testified, in response to the question: "Did all of the members in your gang, were all of the members in your gang told, or requested to be present both Saturday and Sunday to perform these duties?, Yes sir, they was asked to work Saturday and Sunday." (Tr., p. 12). In the circumstances, the Supervisor's language was clear: the gang understood that they were instructed to work on Saturday and Sunday, and, in fact, Claimant worked on Saturday with his gang. If he did not wish to work on Sunday, he should have requested permission. This he did not do.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Track Laborer Mr. A. P. Mims is denied.

  
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
C. F. FOOSE, EMPLOYEE MEMBER

  
L. MARES, CARRIER MEMBER

DATED: December 17, 1985