

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 5
CASE NO. 5

PARTIES)
 TO)
DISPUTE)
) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) VS.
) JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
) PACIFIC RAILROAD COMPANY AND FORT WORTH AND DENVER
) RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when, as a result of an investigation conducted July 20, 1980, they dismissed Trackman J. M. Wallace, said dismissal being capricious, unjust, and an abuse of discretion.
2. That Claimant J. M. Wallace be reinstated to his former position of Trackman with seniority, vacation and all other rights unimpaired and, additionally, that he be compensated for loss of earnings suffered account his wrongful discharge.

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.

On August 14, 1980, Claimant was "Dismissed from the service" of the Carrier "for violation of Rules 665 and 667 of Burlington Northern Safety Rules in connection with failure to report for duty at the designated time and place and being absent without proper authority June 30, 1980 and subsequent dates while employed as a trackman on Section No. 5, Iola, Texas as evidenced by formal investigation afforded him at Teague, Texas July 28, 1980."

Rule No. 665 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."

Rule No. 667 reads:

"Employees must comply with instructions from the proper authority."

Claimant had an established seniority date as Trackman of March 31, 1977 and a seniority date as Machine Operator of April 11, 1978 in the Carrier's Track Department.

The Employees allege that: "In late June, 1980 Claimant's wife's grandfather, who resided in Senton, Texas, became ill necessitating that he be provided with assistance in the matter of nursing and care by the Claimant and his wife. This problem necessitated that Claimant be away from his work location for an indefinite period and resulted in his contacting his Roadmaster from whom he requested a leave of absence.

"Roadmaster denied Claimant's request but the situation was of such nature that the Claimant left without securing a formal leave.

"The investigation was conducted as per schedule and the Claimant was not in attendance. ****

"In the meantime, the family members' conditions had improved to the extent that Claimant was able to return home on September 3, 1980, at which time he became aware that an investigation had been scheduled on July 28, 1980. He thereupon contacted the General Chairman, advised him of the circumstances of the matter and, on September 23, 1980, a claim was presented in Claimant's behalf..."

The evidence of record clearly shows that investigation notice dated July 21, 1980 was mailed to Claimant's home address by certified mail, return receipt requested. The notice was receipted for by Claimant. (Carrier's Exhibit B).

Rule 26. Hearing (a), of Agreement, provides, in part, that an employe "shall be apprised, in writing, of the charges preferred against him and be present at such investigation...". The requirements of this rule are satisfied in the circumstances of the instant case, where there has been service of the notice of investigation by certified mail return receipt requested and receipted for by Claimant. Willful and deliberate failure of an employee who is accused of an offense to attend or participate in his investigation authorizes the carrier to proceed without him, and a Claimant may not defeat Carrier's right to take appropriate disciplinary action against him. The Board has scrutinized the transcript of the investigation and the entire evidence of record and is satisfied that the investigation was conducted in a fair and impartial manner according with the provisions of Rule 26 of Agreement.

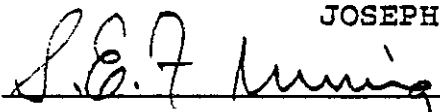
The evidence of record clearly shows that Claimant absented himself without obtaining leave of absence, thereby placing himself in violation of Rules 665 and 667, resulting in his dismissal. If Claimant felt that he was unjustly denied leave of absence, the proper course of action for him was to pursue his grievance, if any, and to obey the rules.

A W A R D

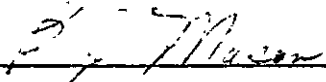
1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman J. M. Wallace is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



S. E. FLEMING, EMPLOYEE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: Dec. 16, 1981