

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
vs.
COLORADO & SOUTHERN RAILWAY COMPANY

STATEMENT
OF CLAIM:

Claim of former Machine Operator A. Borago for reinstatement with all seniority, vacation and other rights unimpaired with compensation for all wage loss suffered account his dismissal from service was allegedly capricious and unjust.

OPINION OF THE BOARD

On claim date, Claimant was assigned to a position of Machine Operator working with a Tie Gang near Wheatland, Wyoming. On said date, the Tie Gang was assigned to work on an overtime basis. During that morning a machine used to unload ties from the work train broke down, and claimant, together with other members of said Tie Gang, were ordered to unload the ties from a work train by hand. Several Machine Operators and Extra Gang Laborers, including Claimant, declined to participate in the work for the reason that they were improperly dressed and equipped to handle the newly creosoted ties, and that they needed the down time to effect repairs to the equipment to which they were assigned. Claimant left the property about 11:30 a.m. on April 28, 1979. As a result of an investigation held on May 14, 1979, Claimant and two other individuals were dismissed from the service for violation of Rules 665 and 667 of the Burlington Northern Safety Rules and failure to comply with instructions issued by his Supervisor.

The Transcript of the Investigation revealed that some rubber gloves were available for the personnel ordered to unload the creosoted ties by hand. The Transcript is silent as to whether or not this Claimant ever attempted to obtain a pair of the available rubber gloves. The Transcript fails to reveal any probative evidence that there was anything wrong with Claimant's machine which would necessitate his attention. Also, the evidence contained in the Transcript is adamant to the effect that Claimant willfully absented himself from duty without proper authority. It is not the prerogative of an employee to determine whether or not he can leave work early. Therefore, this Board finds that the Carrier acted within its authority in assessing the punishment involved in this dispute.

However, the past record of this Claimant, this Board will reinstate Claimant on a lienancy basis without pay for time lost.

AWARD: Claimant reinstated on lienancy basis without pay for

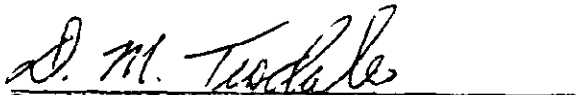
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time lost.

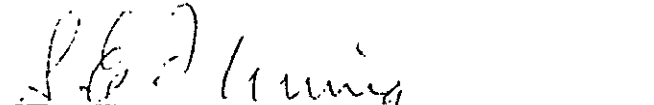
Signed at Denver, Colorado, this 10th day of March,
1981.



GENE T. RITTER, Chairman



D. M. TISDALE,
Carrier Member



S. E. FLEMING,
Employee Member