

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 12

AWARD NO. 12

Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "1. The dismissal of Section Laborer Lawrence E. Gordon August 28, 1979, and removal from service July 2, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File T-M-276C).
2. Section Laborer, Lawrence E. Gordon to be reinstated with all seniority and privileges and paid for all time lost on a continuous basis, including straight time and overtime."

Prior to his dismissal, Claimant Lawrence E. Gordon was employed as a Section Laborer in the Track Sub-department at Sioux City, Iowa. By letter dated July 3, 1979, he was directed

to attend an investigation on July 11, 1979, in connection with his alleged violation of Rule G. The investigation was postponed until August 15, 1979, and was held on that date. Claimant was present and was accompanied by a duly designated representative of the Organization. By letter dated August 28, 1979, Claimant was notified that he was dismissed from service effective that date, for violation of Rule G.

The record shows that on July 2, 1979, Claimant sustained injury to his leg about 9:30 a.m. or 10:00 a.m. His Foreman, who administered first aid, described the injury as "nothing serious" and testified that Claimant continued to work for about half an hour after the injury. Claimant stated that the injury slowed him down, he limped, and that it was painful when he walked on the leg. At any rate, at about 10:30 a.m. he was given permission by his Foreman to drive the Foreman's personal car into Sioux City, about 11 miles from the job site, so he could pick up his pay check.


There is no dispute that Claimant did not return to work, and that officials of the Carrier found him that afternoon in a bar, drinking beer. The Carrier's position is that Claimant was in a duty status at the time, and that his actions were in violation of Rule G. The Organization argues that because of the injury, Claimant had been given permission by the Foreman to be off duty, and this is supported by the fact that Claimant was paid for only half a day, until noon, on July 2, 1979. The Carrier

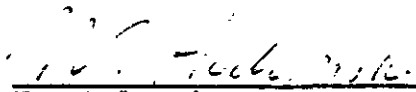
points out that Claimant was paid for only half a day because he stopped working, not because he was permitted to be off-duty.

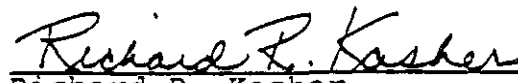
It is this Board's view that the record supports the Carrier's determination that Claimant did not have permission to take the rest of the day off when he left the job to get his paycheck. The Foreman was quite certain on this point. Even Claimant stated that "It wasn't really too clear whether I was supposed to return or not." If Claimant was uncertain on this point, he should have clarified matters. As it is, he resolved the confusion, if confusion there was, in his favor, without the necessary approval from his Foreman. Accordingly, the claim must be denied.

The Carrier, however, has offered to reinstate Claimant conditioned on successful participation in the Carrier's Employee Assistance Program. Despite the fact that the record shows that Claimant has declined participation, that remedy will be reoffered by this Board, providing Claimant makes known to the Carrier his acceptance of this offer within thirty (30) days of this Award.

AWARD: Claim denied.


F. H. Funk,
Organization Member


W. Hodynsky,
Carrier Member


Richard R. Kasher,
Chairman and Neutral Member

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