

PUBLIC LAW BOARD NO. 3460

Award No. 19  
Case No. 19

PARTIES  
TO  
DISPUTE

Burlington Northern Railroad Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of B & B Helper Gus Kalnins on July 24, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Claimant Gul Kalnins be returned to service, with all seniority rights and privileges restored, paid for all straight time and overtime that he could have worked had he not been dismissed from service and his record cleared."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein was charged with being absent without authority on June 25, 26, 27, 30 and July 1, 1980. Following an investigation, Carrier found claimant to be guilty of the charges and dismissed him. The record indicates further that at the time of the incident claimant had less than two years service and approximately three weeks previously had been assessed a 15-day disciplinary suspension for an unauthorized absence of four days.

Petitioner argues that claimant had been hospitalized on June 22 and, after treatment, had been released to a friend's care June 25, 1980. The Organization argues that claimant was ill and was unable to contact Carrier immediately upon being released from the hospital. Under the circumstances, the Organization argues that claimant should have been permitted some latitude in view of the fact that he had been very ill and had just been released from the hospital. Hence, it is urged

that dismissal was an extremely harsh and unnecessary penalty for the particular infraction. He was clearly physically unable to contact Carrier immediately upon his release from the hospital.

Carrier notes that claimant himself admitted that he was wrong in not contacting the Carrier after being released from the hospital and felt that he would like to have another chance. There is no dispute, according to Carrier, with respect to the fact that claimant violated Carrier's rule. Since claimant was guilty, Carrier argues that the dismissal penalty was appropriate, particularly in view of the earlier infraction just a few weeks prior to the incident involved in this dispute. The past record must be considered. Carrier has a right to regular attendance and, hence, in view of the record of the claimant, it was appropriate to dismiss him.

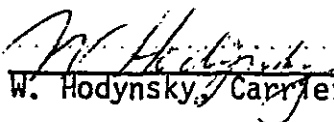
As the Board views it, there is no doubt but that Carrier established claimant's guilt at the investigation. It was in fact admitted. The nature of the charge is a serious one in this industry and has long been recognized as one which in many circumstances warrants dismissal. In this instance, in view of claimant's relatively short service and the prior guilt in an identical circumstance, Carrier's determination of the penalty must be considered appropriate. It clearly was not either discriminatory or harsh in any sense. The claim must be denied.

AWARD

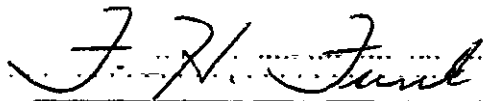
Claim denied.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employer Member

March 29, 1985