

PUBLIC LAW BOARD NO. 3460

Award No. 6
Case No. 6

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) the dismissal of B&B Carpenter D. L. Briggs, August 6, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) that claimant, B&B Carpernter D. L. Briggs, be reinstated with all his seniority rights unimpaired to his former position and paid for all time lost."

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, employed at the B&B shop in Cicero, Illinois, was to report for duty at 7:00 A.M. On July 1, 1980, he called his supervisor at approximately 7:40 A.M. and indicated that he had overslept. His supervisor told him that the gang had already been deployed and that he was advised not to come in to work that day. Subsequently, an investigation was scheduled and held and claimant was found guilty of violating Carrier's rules with respect to attendance. He was dismissed from service following that investigation.

Petitioner alleges that claimant was subjected to double jeopardy since he was refused permission to come to work late on the day he called in and was later penalized by dismissal. Additionally, the Organization notes that the supervisor involved was not called as a witness at the investigation of this matter,

thus jeopardizing claimant's right to due process. Carrier, on the other hand, insists that there were no procedural defects in the manner in which the investigation was conducted and claimant was clearly guilty of the charges. Furthermore, Carrier notes, claimant's record was an abysmal one, particularly with respect to attendance. He had been disciplined some six times during the preceding three-year period and on four of those occasions the discipline related to attendance. Hence, Carrier believes that it was eminently justified in dismissing claimant.

The fact that the supervisor refused to permit claimant to come to work when he called in some forty minutes following the beginning of the shift can hardly be considered to have been a disciplinary measure. This was a practical measure since the work gang had already started and the work had been allocated. Therefore, Petitioner's argument with respect to double jeopardy must be rejected. On procedural grounds, the Organization's insistence that the foreman failed to testify thus impairing claimant's rights in some manner also does not appear to be supported by the record. The testimony at the hearing dealt with the problem specified in the charges. Should claimant have desired the supervisor to have been present, it could indeed have asked for a postponement or asked that he be secured as a witness prior to the conclusion of the hearing. Petitioner chose not to take such action and the testimony at the hearing supported the charges leveled by Carrier. Indeed, there was substantial evidence to indicate that claimant was guilty of the charge of being tardy on the day in question. The supervisor's testimony could not have added to or detracted from that undisputed evidence. Thus, there is no basis on procedural grounds for voiding this disciplinary action. On the merits, there is no doubt but that claimant was guilty and, in view of his prior record, Carrier's decision to terminate him cannot be considered to have been arbitrary or capricious or an abuse of discretion. The claim must be denied.

AWARD

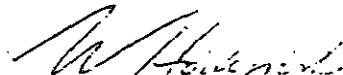
Claim denied.



I. M. Lieberman, Neutral-Chairman



F. H. Funk, Employee Member



W. Hodynsky, Carrier Member

St. Paul, Minnesota
September 30, 1984