

PUBLIC LAW BOARD NO. 3460

Award No. 60  
Case No. 60

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Burlington Northern Railway Company

STATEMENT  
OF CLAIM

- " 1. The dismissal of section-man Jerry Weatherly for alleged violation of general rule 702...."for your failure to report for service as section-laborer at Pingree, No. Dakota, on December 23, through December 31, 1980" was unreasonable and excessive.
2. The claimant shall be reinstated with seniority and all other benefits unimpaired and he shall be compensated for all wage loss suffered."

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.

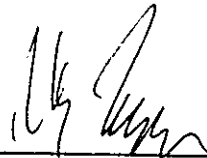
The record reveals, and claimant admits, that he was absent without authority on DEcember 23, 26, 29, 30, and 31st of 1980. He was not scheduled to perform service for the days inbetween, namely December 24, 25, 27 and 28, 1980. Two other facts of the record are relevant to this matter. First, the claimant

had been severely disciplined for an identical infraction within the past calendar year prior to this matter. The second fact is the reason for his absence in this particular circumstances. It appears that the claimant had been incarcerated for driving while intoxicated for 30 days and hence was unable to report for work on the days in question. The fact of the matter is that he did not report for work until January 19, 1981, the date of the investigation.

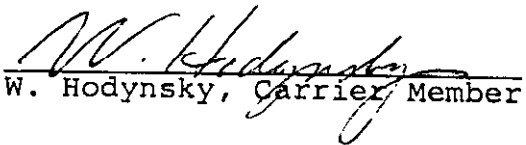
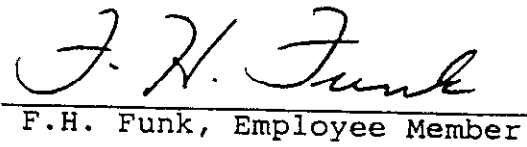
The record reveals no improprieties with respect to the handling of this matter on the property or in the investigation. The claimant was accorded a fair and impartial investigation and found to be guilty of the charges. The only defense mounted by Petitioner is that the penalty involved herein was harsh and excessive under all the circumstances. The Board does not agree. Considering the claimant's relatively short tenure and the fact of a prior disciplinary circumstance identical to that herein, Carrier was correct in its conclusions. Furthermore, it is well established that an incarceration is not a valid excuse for failure to protect an assignment. Since failure to appear for work is a serious offense in this industry and clearly in view of the circumstances, claimant was guilty of this infraction, the penalty of dismissal was not excessive and must be affirmed. The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman

  
W. Hodynsky, Carrier Member  
F.H. Funk, Employee Member

St. Paul, Minnesota

December 12, 1986