

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of	)	
Way Employees	)	Case No. 19
	)	
vs	)	Award No. 17
	)	
Burlington Northern Railroad	)	

STATEMENT OF CLAIM

1. The discipline imposed upon Laborer V. LaFrance for alleged violation of Rules 570 and 574 'by absenting yourself from your assignment without proper authority on June 16, 17 and 18, 1982 and your failure to give a factual report of irregularity and violation of Rules' was arbitrary, without just and sufficient cause and in violation of the Agreement.
2. The Claimant's record shall be cleared of the charge levied against her and she shall be compensated for all wage loss suffered.

FINDINGS

On June 21, 1982 the Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with her alleged failure to protect her assignment and with her allegedly absenting herself without proper authority while assigned to Steel Gang No. 953 on June 16-18, 1982. After the investigation was held as scheduled the Claimant was advised that she had been found in violation of Carrier's Rule 570 and 574 and she was dismissed from service. The discipline was appealed on property by the Organization in the normal manner up to and including the highest Carrier officer designed to hear such before this case was docketed before this Public Law Board for final adjudication. The Claimant accepted reinstatement on leniency basis in 1986 and returned

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to work after passing a physical examination. The date of her return to work was July 7, 1986. The instant claim, therefore, is for lost pay from July 27, 1982 through July 7, 1986.

A review of the record shows that the Claimant made request for a leave of absence prior to July 16-18, 1982 from the Assistant Roadmaster who was working as Supervisor on Steel Gang No. 953. This request was refused, according to testimony given at the investigation by this Supervisor, on the grounds that the gang was short-handed. The transcript of investigation also shows that the Supervisor testified that the Claimant gave no reason for desiring the leave of absence. The testimony given by both the Assistant Roadmaster and by the Foreman of the gang in question shows also that the Claimant was absent on the days in question and that no permission was given to the Claimant by either to be absent on these days. Testimony given by the Claimant herself is inconsistent with respect to whether she had permission or not to be absent on the dates of June 16-18, 1982. At one point in the record the Claimant testified that "...yes (she) did" have proper authority to be absent for all these days, and at another point in the record she testified that the Supervisor granted her "...permission to be absent on the 16th" with implication that such permission had not been granted for the other two days. The Claimant also appears to imply in her testimony that she felt that she contractually had the right to a less than fifteen (15) day leave of absence under Rule 15 of the Agreement by the mere fact that she made a verbal request for such. After a study of this Rule in conjunction with the full record before it the Board must conclude that the Claimant was, with respect to this point, in error. Further study of the transcript shows that the Claimant was also less than candid about why she wanted the leave of absence in the first place. On the one hand she intimates that the leave was needed so that she could take care of her husband who was allegedly in ill-health with a "...back injury (to his) vertabrae". On the other hand there is documentary evidence to the effect that her husband had entered a rodeo calf roping contest on June 18, 1982 which was one of the days the Claimant claimed her husband needed assistance


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because of his ill health. The Claimant's statement at the investigation that she "...really (didn't) know" if her husband had entered the rodeo contest or not on June 18, 1982, as well as her disclaimer of any knowledge about her husband's rodeo winnings which was reported in the local newspaper is testimony so blatantly at odds with her obvious knowledge of these facts that such throws an unfavorable light on her credibility as a witness and on the veracity of her testimony as evidence. In short, there is sufficient substantial evidence in the record to warrant the conclusion that the Claimant was in violation of the Rules at bar and that the discipline assessed was appropriate. For arbitral forums of this kind substantial evidence has been defined as such "...relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229).

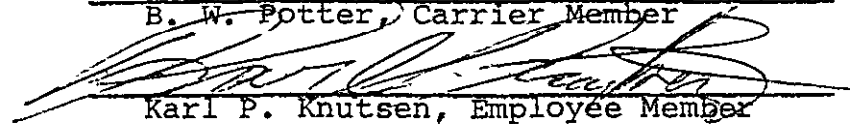
On November 1, 1982 the Claimant was offered reinstatement by the Carrier on leniency basis. It is the position of the Board that it was a mistake for the Claimant not to have accepted such in view of the Rule violations at bar. All loss of work after that time was the result of her own decision in this matter. The Carrier's offer of reinstatement in the fall of 1982 with "...understanding that no claim" would be progressed, on that date, was tantamount to the levying of an approximate three (3) month suspension by the Carrier. Such was, at that point in time, a reasonable assesement of discipline for the Rule infraction at bar.

AWARD

Claim denied.

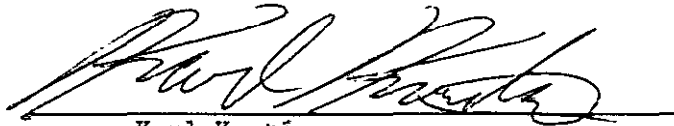
  
Edward L. Suntrup, Neutral Member

  
B. W. Potter, Carrier Member

  
Karl P. Knutsen, Employee Member

Date: July 7, 1987

DISSENT: While we do not disagree with the conclusion of this Board, as in Case 12, Award 11 of this same Board, the offers of reinstatement by Management after 3 months were offers of reinstatement on a leniency basis only with no opportunity to progress the case to a neutral referee nor any opportunity to remove the dismissal from Claimant LaFrance's record. The record shows that Claimant LaFrance was willing throughout this period to return to service if she could progress her claim to remove the dismissal from her personal record as well as the issue of back pay to a neutral referee. Until May 28, 1986, Carrier was unwilling to reinstate Claimant LaFrance to service with the right to progress her claim to a neutral arbitrator. Thus the extension of her suspension was the result of joint action by the Claimant and the Carrier, not solely by either party.



Karl Knutsen  
Labor Member