

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 34
)	
vs)	Award No. 25
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The twenty (20) days of suspension imposed on track Laborer J. W. Dise for alleged violation of Rule 502 was unwarranted.
2. The Claimant's record shall be cleared of the charge levelled against him and he shall be compensated for all wage loss suffered.

FINDINGS

The Claimant was sent notice to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged violation of Rule 502. He was specifically charged with absence from duty without proper authority. Following the investigation the Claimant was advised that he was being suspended from service for twenty days. The Organization appealed this suspension in the normal manner on property up to and including the highest Carrier officer designated to hear such before this claim was docketed before this Public Law Board for final adjudication. The Claimant and the Organization argues that the Claimant attempted to call his supervisor before his shift began but was unable to reach any Carrier official because he was unable to get through on the phone before the 8:00 AM starting time of his shift.

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The Rule which applies to this dispute is the following:

Rule 502

Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the company service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority.

The Claimant is a track Laborer with regular hours of 8:00 AM to 4:30 PM. On the day in question he failed to report to work and failed to contact his foreman or the assistant roadmaster. The Organization has stated that the Claimant takes public transportation, and was unable to get to work or contact his superiors before 8:00 AM. During his testimony at the investigation the Claimant stated that he had called his foreman's office and the Roadmaster's office between 7:45 AM and 8:05 AM but was unable to get through. Claimant states that he had been told that it is a company policy that if one "...can't come in or call by 8:00 AM (then) that's too late(to try)...". The Carrier denies that it has such policy. Based on the Claimant's absence on the day in question, and on his previous record of absences from work, the Carrier suspended the Claimant for twenty days.

It is indisputable that the Claimant was late for work. He admitted as much during the investigation. Nor can the Board find corroborating evidence to support the Claimant's assertion that if the Carrier cannot be contacted by the beginning of a shift, that it should not be contacted at all if an employee is going to be late. In the light of the Claimant's inability to show that any such policy was in place at the Carrier, beyond his own testimony to that effect, the Board must find that the Carrier has met its burden of proof and on merits, the claim must be sustained.

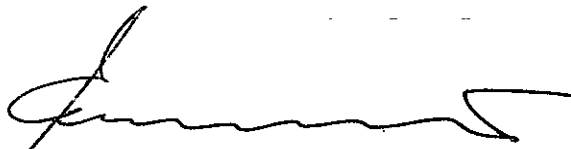
As a last point, the Organization argues that the Carrier has inappropriately relied on the Claimant's personal record in

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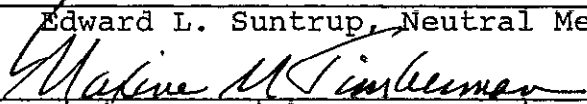
assessing discipline. A review of the record shows that the Carrier did not use the Claimant's prior record to attempt to prove its case on merits, but that it did use such record to come to its determinations on the quantum of discipline. Such actions on the part of the Carrier are supported as proper by arbitral precedent and this objection raised by the Organization must be dismissed (See Public Law Board 2746, Award 7; Public Law Board 3469, Award 19).

AWARD

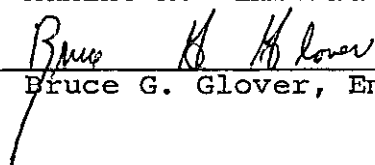
The claim is denied.



Edward L. Suntrup, Neutral Member



Maxine M. Timberman, Carrier Member



Bruce G. Glover, Employee Member

Date: _____