

PUBLIC LAW BOARD NO. 4340

Joseph Lazar, Referee

AWARD NO. 15

CASE NO. 15

<u>PARTIES</u>	)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
<u>TO</u>	)	vs
<u>DISPUTE</u>	)	BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT  
OF CLAIM:

Claim in behalf of C. H. Jackson that he be returned to service with all rights intact, paid for all time lost and that the charges be removed from his service record as a result of his dismissal September 28, 1988.

FINDINGS:

The Board, on consideration of the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated April 10, 1987, that it has jurisdiction of the parties and the subject matter, and that, pursuant to the Agreement dated April 10, 1987, oral hearing by the parties, including Claimant, has been duly waived.

Claimant Trackman Charles H. Jackson was dismissed from service on September 28, 1988 for violation of Rule 532, being absent on September 27, 1988 without proper authority. Rule 532 reads as follows:

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

It is undisputed that Claimant was absent on September 27, 1988, and he admits that he did not comply with the rule:

"Q. Are you familiar with and understand this rule?

A. Yes, I do.

Q. In view of your absence on September 27, 1988, do you feel you complied with that rule?

A. No, sir, I didn't." (Tr., p. 19).

The record is clear that Claimant was absent without authority on a number of previous occasions: July 19, 20, August 3, 6, 8, 10, 22, and 23; that Claimant was verbally counselled on July 20, and that Claimant was suspended from service for five days, August 24 through August 30, 1988. Claimant was verbally counselled after his suspension, but he again was absent without authority on September 11, 14, 17, 20, 21, and on September 27. (Tr., pp. 6-7). The Carrier's efforts at progressive discipline were patient, caring, firm, and when obviously futile, exhausted.

The record shows substantial probative evidence in support of the Carrier's determination that Claimant violated Rule 532. In view of the Carrier's efforts at progressive discipline and the Claimant's past record of absence without authority, the discipline of termination was not excessive.

The record shows, and Claimant admits that "a lot of this absenteeism related to ... problems with drug and alcohol." (Tr., p. 19). On his dismissal, Claimant entered into a drug and rehabilitation program recommended to him by the Carrier's Counsellor, Mr. Wurstenburger. The transcript of investigation shows the following:

"Q. Have you contacted Mr. Wurstenburger since you graduated from this program?

A. Yes, I have. I contacted him on my dismissal from the program.

Q. Could you tell us what Mr. Wurstenburger's comments were?

A. Mr. Wurzburg's comments were that he needed, you know, no more information from me; I need to talk to, you know, the railroad office, you know, as quick as possible and, you know, union representative.

Q. Is this a BN-approved program?

A. I really don't know, Mr. Woods, I really don't know.

Q. Well, Mr. Wurstenburger, the BN representative, recommended it, so you would consider it a BN-approved program?

A. That's correct.

Q. Are you aware of their Rule G policy on the BN?

A. Not to the full extent, you know. I have yet to see Rule G. No more than I know no drinkin' and druggin' on the job.

- Q. Well, as company policy, do they usually--once you go through the program, do they usually put you back to work?
- A. Yes.
- Q. Are you ready to go back to work?
- A. Yes, sir. I'm real ready.
- Q. Do you feel that you have completely turned your life around and are ready to take and accept the responsibility of a job?
- A. I feel like a brand new man, and I feel like movin' up on the job now. I've seen some light that, you know, I've been neglecting for a pretty good while now, matter of fact, about the last year. And now I'd like to say it's a excellent program; it's got me back with my higher power, with God; stop worryin' about other people; start doin' my job; start doin' what I have to to to be successful. And I can't say enough for the program.
- Q. Did you get a--some kind of certificate or some notification or what have you that you have completed this program?
- A. No. I have received--I got my paper work and everything.
- Q. Is that--how is the Burlington Northern notified that you have completed--successfully completed the program?
- A. Through one of the counselors down there.
- Q. They call the BN people and tell them that you've successfully completed--
- A. They call my EPA representative and talked to him.
- Q. Which was Mr. Wurstenburger?
- A. That's right. That's correct." (Tr., pp. 19-20).

The record shows that Claimant was disciplined for his violation of Rule 532, not for the use of drugs. Nevertheless, Claimant's absenteeism problem was clearly related to his drug problem. If Claimant had entered voluntarily into the Carrier's rehabilitation program prior to his termination for violation of Rule 532, then, in that event, he might have become eligible for reinstatement in accordance with the Company's rehabilitation policy. Claimant, however, did not voluntarily enter into the rehabilitation treatment until after he had been terminated. This was too late.

In effect, Claimant's plea here is a plea for leniency. The Board does not have jurisdiction to grant a claim for leniency. Such a plea, if Claimant wishes to do so, must be directed to the sense of grace and compassion of the Carrier in its exercise of its sole and unfettered judgment.

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A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.

  
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JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: OCTOBER 30, 1989

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