

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 1

Case No. 2

STATEMENT OF CLAIM

Claim on behalf of B&B Helper K.M. Owen that he be reinstated with his seniority rights unimpaired and be compensated for wage loss, if any, suffered by him resulting from his dismissal on June 16, 1986.

F I N D I N G S

Following an investigative hearing, the Claimant was dismissed from service for violation of Rule 570 (concerning reporting for duty) in reference to his absence without proper authority on May 27-30, 1986.

The hearing record shows that the Claimant did call in on May 21 to the proper supervisory office to report his absence because of "car trouble". He was absent thereafter through the period for which he was charged. The excuse given for failure to report over a ten-day period may properly be found to be inadequate, but the Carrier was at least alerted by the Claimant

as to his anticipated absence. The Board finds that dismissal under these circumstances is too harsh a penalty.

The Claimant's report on May 21 clearly was not sufficient to cover his sustained absence thereafter, and a substantial disciplinary penalty is warranted, especially in view of the fact that the record shows disciplinary action for previous Rule 570 violations.

On a procedural basis, the Organization objected to the signature on a Carrier response in the claims appeal procedure by a Carrier Representative who signed "for" the properly designated officer. Since the reply was in the name of the proper officer, the Board does not find this sufficiently violative of Rule 27 to require that the claim be sustained on this basis.

The claim will be sustained to the extent that the Claimant shall be offered reinstatement with seniority rights, but without compensation for back pay or retroactive benefits. Failure of the Claimant to accept reinstatement within 30 days of notice shall mean that the claim is denied.

A W A R D

Claim sustained to the extent provided in the Findings.

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The Carrier is directed to put this Award into effect within
30 days of the date of this Award.

A handwritten signature in cursive script, reading "Herbert L. Marx Jr.", is written over a horizontal line.

HERBERT L. MARX, JR., Referee

NEW YORK, NY

DATED: June 9, 1988