

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 15

Case No. 15

STATEMENT OF CLAIM

The Carrier's decision to dismiss Equipment Operator Mr. R. D. Morelock was in violation of the Agreement arbitrary, capricious and unduly harsh.

The Carrier shall now be required to reinstate Claimant to his former position with seniority and all other rights restored unimpaired and compensation for all wage loss suffered.

F I N D I N G S

The Claimant was notified by certified mail to his address of record that he would be subject to an investigative hearing on September 18, 1987 in reference to his responsibility for his "alleged absence without proper authority from August 3, 1987 through September 11, 1987". The letter was returned as unclaimed by the addressee. The Claimant did not appear for the hearing. Following the hearing, the Claimant was dismissed from service.

Testimony by the Claimant's Supervisor was to the following effect: The Supervisor talked with the Claimant on August 3. The Claimant advised that his doctor required him to be out of service for "two or three days". The Claimant was then advised that a doctor's statement would be needed as to his diagnosis and projected duration of absence. Nothing further was heard from the Claimant until August 27, when he left a message that he had been released from a Veterans Administration Hospital; he was going to Oklahoma to visit an ill brother; and that he would call again. Nothing further was heard from the Claimant up to the date of the investigation.

The record shows a letter dated November 4, 1987 from the Claimant to his General Chairman, alleging his continued illness.

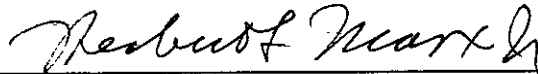
The Organization faults the propriety of the investigation, arguing that the Claimant was on sick leave and thus not subject to an investigation. The Organization cites Rule 32 in this regard, but this Rule refers only to an employee injured on duty not being required to attend an investigation; it does not refer to off-duty illness or other matters.

The Referee finds that the Claimant was not on authorized sick leave, having provided no documentation nor having been specifically granted such leave. It was clearly his responsibility to provide such information. In the absence of such information, the Carrier's action was warranted.

The Organization also makes a procedural objection in that the reply to the Organization's appeal was not signed by the Division Superintendent. The reply was, however, signed "for" the Division Superintendent by a member of his staff, and the Referee finds this was sufficient.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee

DATED: September 29, 1989

NEW YORK, N.Y.