

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 16

Case No. 16

STATEMENT OF CLAIM

The Carrier violated the current Agreement when it dismissed Trackman H. C. Williams on the basis of unproven charges. Said action being excessive and in abuse of discretion.

The Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered and his record cleared of all charges.

F I N D I N G S

The Claimant was notified to attend an investigative hearing on November 17, 1987 concerning his responsibility for his "alleged absence from duty without authority from October 28, 1987 until November 9, 1987". The Claimant failed to appear at the hearing. Following the hearing, the Claimant was dismissed from service.

The Claimant's Foreman testified at the hearing as follows:

18. Q. Have you had contact or has he had contact with the railroad since then?

A. On October 26, a girl called in for him sometime that day, and said he took his sister to the hospital, on a pay phone, and October 27, a girl called in sometime during the day and said he was sick. And after that I haven't heard anything else from him or anybody else.

The Foreman further testified as to the Claimant's adequate knowledge concerning reporting procedures.

The hearing record demonstrates that the Claimant failed to meet the requirements of Rule 570 concerning attendance.

The Organization provided information in the claims handling procedure that the Claimant's house had burned down, thus allegedly explaining why he did not receive the hearing notice, and that he had advised a Carrier official as to a broken leg. In response, the Carrier contends that the house burning had been a previous incident, for which the Claimant had received time off, and that there was no record of report of a broken leg.

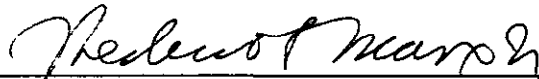
Under these circumstances, the Referee finds no basis to disturb the Carrier's dismissal action.

The Organization also makes a procedural objection in that the reply to the Organization's appeal was not signed by

the designated 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.

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

HERBERT L. MARX, JR., Referee

DATED: September 29, 1989

NEW YORK, N.Y.