

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 17

Case No. 17

STATEMENT OF CLAIM

(1) The Carrier violated the provisions of the current Agreement when it removed Mr. J. E. Jackson from the service of the Fort Worth and Denver Railway Company effective January 14, 1988.

(2) The Carrier further violated said Agreement when it removed Claimant J. E. Jackson from the service of the Joint Texas Division on January 15, 1988, said action being arbitrary, capricious and in violation of the Agreement.

(3) The Carrier will now be required to reinstate Claimant's seniority on both Railroads (seniority districts) as well as all benefits and compensation for all wage loss suffered.

F I N D I N G S

By letter dated December 21, 1987, the Claimant was notified to appear at an investigative hearing on December 29, 1987 to determine his responsibility concerning his "alleged absence from duty without proper authority from December 7, 1987 through

December 16, 1987". The Claimant acknowledged receipt of the letter on December 22, 1987, but he did not appear at the hearing.

According to the Timekeeper who testified at the hearing, the Claimant advised her on Friday, December 4 that he was "leaving early" and that he had "okayed" his early departure with the Roadmaster.

There is no record of the Claimant reporting for work commencing December 7 or advising of his reason for absence.

By letter dated January 14, 1988, the Claimant was notified that he was dismissed from service.

At the time of the investigation, the Claimant held seniority on two districts -- the Ft. Worth and Denver Seniority District, where he was working, and the Texas Division Seniority District. By letter dated December 14, 1987 (during his absence giving rise to the investigation), the Claimant was notified that he was recalled to the Joint Texas Division as of January 4, 1988. The Organization argued, during the claims handling process, that the Claimant had simply given up his seniority on the Ft. Worth and Denver Seniority District in favor of his seniority on the Texas Division, and thus should not be denied the opportunity to exercise his seniority on the Texas Division.

While separate working agreements apply for the Carrier's various divisions (formerly separate railroads), many rules are enforced in common throughout the Carrier's system. This includes the standard Rule 570 which reads as follows:

570. 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.

Since the Claimant failed to appear for the investigative hearing, after due notice, the basis for his absence from December 7 through December 16 remains speculative. There is no proof for the contention that the Claimant "gave up" his seniority on the Ft. Worth and Texas Division on December 4. The fact that he was subsequently notified of employment opportunity on a different seniority roster does not diminish the gravity of his failure to report or to explain his absence.

The Carrier is on firm ground in determining its right to take disciplinary action as to the Claimant's overall relationship with the Carrier, based on a rule in effect at the point he was working (and, incidentally, in other divisions as well). The Claimant placed himself at risk by not appearing as scheduled for the hearing or to provide reasonable explanation for such

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failure. The Carrier correctly viewed this extended unexcused
absence of the same gravity as if there had been no coincidental
recall to another division.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee

DATED: September 29, 1989

NEW YORK, N.Y.