

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 19

Case No. 21

STATEMENT OF CLAIM

(1) The Carrier violated the provisions of the current Agreement when it dismissed Mr. M. B. Phillips on the basis of unproven charges. Said action being excessive and in abuse of discretion. (System file EMWD 88-11-04).

(2) The Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired and compensated for all wage loss suffered.

F I N D I N G S

Claimant was subject to an investigative hearing concerning his responsibility for his "alleged absence from duty without proper authority on June 2, 1988 and June 3, 1988" while assigned as Trackman. At the hearing, the Claimant admitted that he had failed to report on this two days and had not sought permission to be absent.

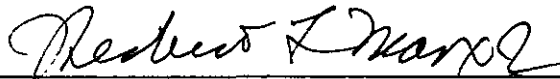
Following the hearing, the Claimant was dismissed from service. While a two-day absence, by itself, would not

necessarily warrant dismissal, such must be viewed in the light of the Claimant's disciplinary record. In this instance, the Claimant had been assessed numerous previous disciplinary penalties, including two dismissals which were rescinded, at least one of which was on a leniency basis. On this basis, the Referee has no basis to disturb the Carrier's action.

Contentions by both parties as to failure to meet time limits in the claims handling procedure are not considered to be of consequence by the Referee.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee

DATED: September 29, 1989

NEW YORK, N.Y.