

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 20
Case No. 22

STATEMENT OF CLAIM

(1) That the Carrier's decision to dismiss Mr. R.C. Trammel was in violation of the Agreement, arbitrary, capricious and unduly harsh.

(2) The Carrier shall now be required to reinstate the Claimant to his former position with seniority and compensation for all wage loss suffered.

Claimant was subject to an investigative hearing in connection with his "alleged absence without authority on March 3, 6, 9, 10 and 13, 1989". Although the Claimant was sent notification to his address of record, he failed to appear at the hearing. The hearing properly proceeded in his absence. Time records indicated the absences were as specified in the charges.

As a result, the Claimant was dismissed from service. As to the severity of penalty, the Referee notes that the

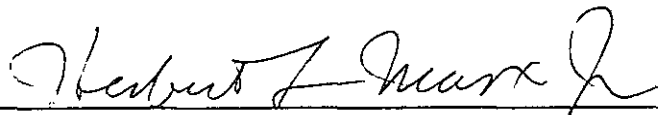
Claimant had been previously dismissed for a Rule G violation and was reinstated eight months later.

The Organization notes that the Claimant was sent a letter on March 27, 1989 concerning attendance requirements. This letter was directed to the Claimant after the notice of hearing and before the assessment of penalty. The Organization suggests the Claimant was thus subject to two disciplinary measures for the same offense. Although the March 27 letter was somewhat unusual, it did not in fact assess discipline, and thus it is no impediment to the dismissal action as a result of the hearing.

Given the unexplained absences in March, the Claimant's failure to attend the hearing, and his previous record, the Board has no basis to modify the Carrier's action.

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., Neutral Referee

NEW YORK, NY

DATED: September 21, 1990