

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 5

Case No. 7

STATEMENT OF CLAIM

Claim on behalf of R.A. Bowers that he be reinstated to his former position with all seniority and benefits unimpaired and he be compensated for all wage loss suffered as a result of his dismissal on October 30, 1986.

F I N D I N G S

Claimant was absent from work commencing September 9, 1986 without providing any notification as to the cause of his absence until September 26, 1986. The Claimant then wrote to the Carrier requesting a 30-day leave of absence commencing October 1 based on "family problems and marital problems". He expressed willingness to "waive an investigation" in reference to his absence up to this point. This letter was received by the Carrier on October 2, 1986. The Carrier replied on October 7 denying the request for leave of absence and stating to the Claimant, "You

are considered absent without authority". On the same date, the Carrier notified the Claimant by certified mail of an investigation to be held on October 15 in connection with the Claimant's "alleged absence from duty without proper authority from September 9, 1986 until October 6, 1986".

The record does not indicate whether the Claimant actually received either the Carrier's response as to the leave of absence or the investigation notice. However, the Carrier had apparently followed the correct procedure in addressing the letter and notice to the Claimant's address of record.

The Claimant failed to appear at the investigative hearing and did not request a postponement.

There can be no doubt that the Claimant was absent without permission for an extended period. After writing to request a leave, he also did not report, nor did he report after (presumably) receiving the Carrier's denial of leave.

While the personal circumstances related in the Claimant's request for leave might otherwise operate to mitigate the disciplinary action taken, this is offset by the Claimant's failure to appear at the hearing and, more significantly, by a disciplinary record involving two previous 30-day suspensions for unauthorized absence within the same year of his dismissal. There is no basis to disturb the Carrier's action.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee

DATED: June 9, 1988