

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

v.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM

1. The fifteen (15) days of suspension from service imposed upon Sectionman E. J. Polks for alleged absence without proper authority on October 3, 4 and 7, 1985, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File S-P-333/AMWB 86-03-14).
2. The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

Mr. Elijah Polks, the Claimant, requested and was granted eleven (11) days paid vacation during January, 1985. Subsequently, during February, 1985, while Mr. Polks was on a temporary assignment, he requested and was granted four (4) days paid vacation. These fifteen (15) days used up Mr. Polks' vacation entitlement for 1985. However, in October, 1985, Mr. Polks requested and received permission to take two (2) days vacation. The supervisor who approved the two days was unaware that Mr. Polks had used four days vacation while on temporary assignment.

Mr. Polks knew or should have known the amount of his annual vacation entitlement; that entitlement, 15 days, had been the same since calendar year 1982. Moreover, it is evident that he took his 1985 vacation entitlement in two installments that totaled 15 days. Mr. Polks knew or should have known in October that he was requesting vacation days to which he was not entitled. The approval by the supervisor of the vacation days in October does not condone Mr. Polks' misrepresentation of his vacation entitlement; the supervisor acted in good faith without full knowledge.

Mr. Polks was absent on Monday, October 7, 1985; the first scheduled day of work following the two (2) days of vacation taken in October. Mr. Polks contends that he was too ill on October 7th to notify the Carrier that he could not report for work on that day. The following two days, October 8th and 9th, Mr. Polks reported for work, but was sent home due to ill health. It is evident that Mr. Polks was ill on October 7, 8 and 9, 1985. In the absence of evidence to the contrary, the benefit of doubt is given to Mr. Polks that he was too ill on October 7th to notify the Carrier about his absence.

A review of the records indicates that Mr. Polks was provided a fair and impartial investigative hearing. There is no evidence of record that the hearing officer intimidated Mr. Polks, that specific testimony was omitted from the transcript, or that the hearing officer served without proper authority.

Mr. Polks was assessed fifteen (15) days actual suspension from service for alleged violation of Rule 570 on October 3, 4 and 7, 1985. Because discipline for the absence on October 7th is not upheld, the suspension is reduced to twelve (12) days. The request for vacation days to which he was not entitled is serious misconduct and warrants the disciplinary suspension. Given Mr. Polks' past record for Rule 570 violations in 1983 and 1984, no leniency is warranted.

#### AWARD

The disciplinary suspension of Mr. Elijah Polks shall be reduced from fifteen (15) days to twelve (12) days.

#### ORGANIZATION MEMBER DISSENT

The Organization respectfully dissents from the finding of the Board in the instant case. The evidence of record shows that the Officer to whom Claimant Polks had a direct reporting relationship brought the charges, conducted the hearing and assessed the discipline. The evidence of record also shows that this self-same officer did not conduct the hearing in a manner above reproach. Because the evidence of record clearly shows that the hearing was not conducted in a contractually required "fair and impartial" manner, the Organization respectfully avers that the procedural defects are sufficient to merit total reversal of the discipline assessed.

Ronald L. Miller

Ronald L. Miller  
Chairman and Neutral Member

Maxine M. Timberman

Maxine M. Timberman  
Carrier Member

Karl P. Knutsen

Karl P. Knutsen  
Organization Member

4-5-88

Date