

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 58

Carrier File No. 5 MWA 911001

Organization File No. C-91-5090-5

STATEMENT OF CLAIM

1. The discipline [ten (10) and fifteen (15) days' suspension] imposed upon Weed Mower Operator D. D. Calvin for alleged violation of Rule 532 on June 12, 13 and 14, and on June 18, 19, 20, 1991, respectively, was without just and sufficient cause, arbitrary and unwarranted.

2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

According to the Claimant, he had a bad day on June 12, 1991. He reported late for work, allegedly owing to a flat tire on his car. At the end of the day, while on Carrier property, his car was disabled after suffering damage from another vehicle. Again according to the Claimant, his car's unavailability caused his necessary absence from work for more than a week thereafter.

On June 20, 1991, the Claimant was subject to an investigative hearing as to his absences on June 12, 13, and 14. He was present,

although tardy, for the hearing. As a result, he was assessed a 10-day disciplinary suspension, notice of which was sent to him by letter of June 28, 1991.

On June 28, 1991, the Claimant was subject to a further investigative hearing as to his absences on June 18, 19, 20. (The record indicates he was also absent on Monday, June 17, but was not charged therefor.) As noted above, he did appear at the first investigative hearing on June 20, although he did not report for work that day. As a result of this, he was assessed a 15-day disciplinary suspension, notice of which was sent to him by letter of July 8, 1991.

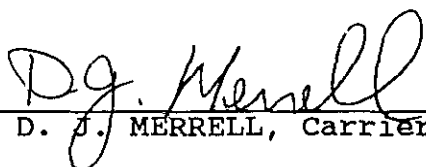
The Board finds no basis to dispute the Carrier's determination that discipline was appropriate for the Claimant's extended absence and failure to report. What is unusual here, however, is that there were two separate penalties for what was clearly known to the Carrier as one continuous absence. Only one penalty was warranted, and the Board determines that a 15-day suspension is appropriate. The Claimant shall be made whole from the remaining 10 days' suspension.

A W A R D

Claim sustained to the extent provided in the Findings. The Carrier is directed to place this Award into effect within 30 days of the date of this Award.


HERBERT L. MARX, Jr, Chairman and Neutral Member


MARK/J. SCHAPPAUGH, Employee Member


D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: 