

AWARD NO. 35

CASE NO. 40

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. J. A. Courtney effective December 1, 1976, was excessive and wholly disproportionate to the alleged offense.
- (2) Mr. J. A. Courtney be reinstated with all rights unimpaired and compensated at his straight time rate for all time lost as a result of the violation referred to within Part (1) of this claim.

OPINION OF BOARD:

Claimant J. A. Courtney entered Carrier's service as a trackman on August 1, 1975. In November 1976 he was working on a maintenance gang near South St. Paul, Minnesota. Claimant failed to report for duty on November 3, 4, 5, 8, 11, 17, 18, and 19, 1976. A formal investigation was held on November 29, 1976 into his absences. Following that investigation and a review of his personnel record Claimant was notified of his dismissal from the service of Carrier. At the investigation Claimant testified that he called in on November 3, 1976 and reported to someone in the East St. Paul Yard Office that he was ill with the flu. Claimant was also absent on Thursday and Friday, November 4 and 5, as well as Monday, November 8, 1976. No calls were made on any of those days. If Claimant did call in on

November 3, 1976 the information of his illness was not reported to his Foreman. Claimant worked on November 9 and 10 but then again was absent on November 11, again without excuse. Claimant returned to work on November 12, 15 and 16, 1976 but then was again absent on Wednesday, Thursday and Friday, November 17-19, 1976. Claimant admitted that he made no attempt to report his absence on November 17, 1976 and alleged that his girlfriend made an unsuccessful attempt to report his absence on November 18, 1976. He testified further that his girlfriend did make contact with a fellow trackman at 3:50 P.M. on November 19, 1976, shortly before quitting time, and asked that individual to inform the Foreman of Claimant's absence. It is noted, however, that no excuse was offered to explain or justify his absence on those latter three days. Summarizing the record evidence, and giving Claimant the benefit of every doubt, he has adequately explained only one day of the eight days unauthorized absence with which he was charged. Assuming that he made every effort on November 3, 1976 to reach the Foreman and that he was in fact ill from the flu, the record shows that for the remainder of the days he either failed to notify supervision of his anticipated absence and/or had no justifiable excuse for his absence. When Carrier makes a prima facie showing of extensive unauthorized absences, as in this case, the burden shifts to the Claimant to provide sufficient information to support assertions of justification. Nor are these absences isolated instances. Rather a review of Claimant's personnel record shows that during his short tenure of employment Claimant missed 30 days of work out of 158 workdays available to him. Less than one month prior to the absences at issue herein, he was given a written reprimand for absenteeism on October 18, 1976 following which two days later he was again absent and received another written reprimand on October 20, 1976. On the record before us Claimant has demonstrated that he is either unwilling or

unable to comply with reasonable attendance regulations. On the basis of the proven unexcused absences and his overall personnel record we do not find the penalty of termination excessive in this case. The claim must be denied.


FINDINGS:


Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

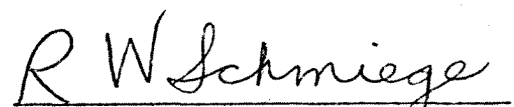
- 1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 - 2. that the Board has jurisdiction over the dispute involved herein;
- and
- 3. that the Agreement was not violated.

AWARD

Claim denied.


 Dana E. Eischen, Chairman


 H. G. Harper, Employee Member


 R. W. Schmiede, Carrier Member

Dated: Dec. 6, 1978