

PUBLIC LAW BOARD NO. 1850

Award No. 12

Docket No. 45

Parties Brotherhood of Maintenance of Way Employees

do and

Dispute Baltimore & Ohio Railroad Company

Statement of Claim: 1. Carrier violated Rule 48 of the Agreement by improperly holding Trackman Cardell Bowling off his job beginning February 12, 1977, without a necessity for so doing.

2. Carrier unfairly assessed excessive discipline of ten (10) days actual suspension for Trackman Cardell Bowling following the hearing held on February 23, 1977.

3. Claimant Cardell Bowling be now reimbursed for the time lost and the discipline of ten (10) days removed from his record, on account of the Carrier's actions referred to in Parts 1 and 2 of this claim.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackman, on February 11, 1976, was assigned as such with Headquarters at Fifth and Henry Street, Hamilton, Ohio, with Track Foreman E. Mullins. His assigned hours were 7:30 a.m. and 4:00 p.m. Prior to 3:00 p.m. said Foreman was instructed to pick up some ties

and take same to the scene of a derailment at Middleton, Ohio. Enroute to Middleton, the Foreman and his gang stopped at the Hamilton Headquarters. Claimant left the track telling the Foreman to "mark him off at 2:55 p.m. as he was going home," whereupon he left the property.

Claimant was held out of service until February 23 and on February 17, 1976, given a notice of investigation to be held February 23, to determine his responsibility in absenting himself without permission of the proper authority on February 11, 1976. As a result thereof, Carrier concluded Claimant guilty as charged and assessed ten (10) working days actual suspension.

As stated by Referee Coburn in Third Division Award 11170:

"What we look for on appeal is prejudicial error adversely affecting an employee's procedural and substantive rights under the controlling Agreement."

Here no such rights were violated. Holding Claimant out of service is permissible and is contemplated by Rule 48. Such a result is not construed to be discipline.

Claimant left before the conclusion of his normal tour of duty. He admitted to that fact. He also admitted that he did not have permission from his Foreman to do so. Consequently, the Board construes Claimant's action on February 11, 1976, to have been a deliberate and willful act to avoid working possible overtime. Claimant at


that point in time still had one hour of his normal and assigned hours of work to complete.

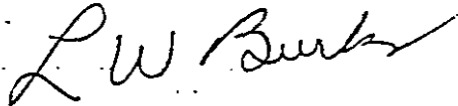
As was pointed out in Third Division Award 19791:


"Unauthorized absences from duty, if proven, are serious offenses, and often result in dismissal from service."

Here, such unauthorized absence was proven. The discipline imposed was reasonable. This Claim will be denied.

Award: Claim denied.


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, September 24, 1977.