

PUBLIC LAW BOARD NO. 2206

AWARD NO. 63

CASE NO. 65

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Section Laborer G. L. Hotchkin August 31, 1979 was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File T-M-275C)
2. Section Laborer G. L. Hotchkin now be returned to service with seniority rights and privileges unimpaired with payment for all time lost.

OPINION OF BOARD:

This claim involves the discharge of Sectionman Gary Hotchkin in August 1979. He was hired in August 1978 and at the time of dismissal was working in the Sioux City, South Dakota Section Gang, with assigned hours 8:00 AM to 4:00 PM daily. On the morning of Friday, August 3, 1979, Claimant did not appear on time for work and the bus which transported his crew to the job site left without him. According to the testimony of the Sioux City Roadmaster, a woman who identified herself as Claimant's mother telephone the office at approximately 8:50 AM and advised that he would not be into work that day because he was sick. The Roadmaster says that he asked to speak directly with Mr. Hotchkin and the woman reportedly went to get Claimant,

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but after five minutes someone hung up the phone. Approximately thirty minutes later Claimant himself arrived at the Roadmaster's office, asserting he had overslept, and said that he now wanted to go to work. The Roadmaster declined on grounds that the bus had already left for the job site and sent Claimant home.

On August 6, 1979 Claimant was notified to attend an investigation which was held on August 14, 1979. He appeared, waived his right to a representative, and acted in his own behalf at that hearing. He disputed the Roadmaster's testimony that he had arrived at the office at 9:20 AM and insisted that he had in fact arrived at approximately 8:20 AM. He admitted that he was awake prior to 8:00 AM and was aware that his mother had telephoned to report him sick. He asserted that his illness was of a "personal nature" which he did not wish to disclose but that it was so debilitating that he had been unable to walk from his bed to the telephone to speak with the Roadmaster himself. Finally, he testified that when his mother told him that the Roadmaster was "unhappy" with his absence he "drug himself out of bed" and came to work.

On the basis of the evidence produced at the hearing Carrier found Claimant guilty of being absent without leave on August 3, 1979. Upon consideration of his offense and his prior disciplinary record, Carrier terminated his employment. The Organization filed the present claim on his behalf seeking his reinstatement with back pay. We find that Carrier had substantial evidence on the record which, if believed, would support a finding that Claimant was guilty as charged. Apparently Carrier resolved the credibility conflicts against him and we cannot say after reading his testimony that Carrier was arbitrary in disbelieving his story. The penalty of termination

is severe, but considering the circumstances of his absence on August 3, 1979, his short term of employment, and his prior disciplinary record, we cannot say that it was unreasonably harsh.

AWARD

Claim denied.

J. H. Frank
Employee Member

W. H. Hodynsky
Carrier Member

Dana E. Eischen, Chairman

Date: November 30, 1982