

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 13
CASE NO. 15

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
FORT WORTH AND DENVER RAILWAY COMPANY

**STATEMENT
OF CLAIM:**

1. That the Carrier violated the Agreement when as a result of an investigation conducted Thursday, September 24, 1981, they dismissed Trackman W. B. Kincade from service for violation of Rules 665, 667 and General Rule "C" of the Burlington Northern Safety Rules.
2. That W. B. Kincade be reinstated to the service with seniority, vacation and all other rights unimpaired and additionally be compensated for loss of earnings suffered account the Carrier's improper actions.

FINDINGS:

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Trackman W. B. Kincade, of the Fort Worth Division, on October 1, 1981, was "dismissed from the service of the Fort Worth and Denver Railway Company for violation of Rules 665, 667 and General Rule C of the Burlington Northern Safety Rules (Form 15001 3/73) in connection with his failure to report for duty at the designated time on September 15, 1981 while he was employed as a Section Laborer at Fort Worth, Texas as evidenced by a formal investigation afforded him on Thursday, September 24, 1981 at Fort Worth, Texas."

Claimant Trackman W. B. Kincade has admitted that he was tardy for service on September 15, 1981, and that his tardiness was without prior permission from proper authority:

- "Q. Were you scheduled to report for work at 8 a.m. September 15, 1981?
A. Yes.
- Q. Did you report for work at 8 a.m. on September 15, 1981?
A. No.
- Q. Did you report for work at any time on September 15, 1981?
A. Yes.
- Q. What time did you report for work?
A. At 9:00.
- Q. What happened after you reported at 9 a.m. for work?
A. Jessie sent me home.
- Q. Are you referring to Section Foreman Tubbs?
A. Yes.
- Q. Did you secure permission from Mr. Tubbs to be late for work on September 15?
A. No." (Tr., pp. 8-9).

Rules 665, 667 and General Rule C of the Burlington Northern Safety Rules read:

665: EMPLOYEES MUST REPORT FOR DUTY AT THE DESIGNATED TIME AND PLACE. THEY MUST BE ALERT, ATTENTIVE AND DEVOTE THEMSELVES EXCLUSIVELY TO THE COMPANY'S SERVICE WHILE ON DUTY. THEY MUST NOT ABSENT THEMSELVES FROM DUTY, EXCHANGE DUTIES WITH OR SUBSTITUTE OTHERS IN THEIR PLACE WITHOUT PROPER AUTHORITY.

667: EMPLOYEES MUST COMPLY WITH INSTRUCTIONS FROM THE PROPER AUTHORITY.

General Rule C: BURLINGTON NORTHERN SERVICE DEMANDS THE FAITHFUL, INTELLIGENT, COURTEOUS, AND SAFE DISCHARGE OF DUTY.


Tardiness, like absenteeism, is a grave offense, and in a proper case may result in dismissal, especially where progressive discipline has been pursued by the Carrier and the employee has failed to correct his behavior. Uncontrolled absenteeism, or tardiness, produces chaos and is not to be condoned.

Mitigating factors, however, appear in the record. Claimant stated (Tr., p. 4): "...I called in, Jessie, you know, but you wasn't there. Why you wasn't there at 7:30 and 7:40 instead of 5 minutes till 8?" Foreman Tubbs did not deny Claimant's assertion. Further, when Claimant asked, (Tr. p. 6) Well, how can we reach you?" Foreman Tubbs responded: "You don't reach me, you reach him." Claimant then stated: "You never told me that. I been out a year and I don't know the rules, and I just been back two months and nobody, no one has told me who to report to besides Jessie Tubbs." (Tr., p.6). There is no denial of this last statement. Accordingly, it is not manifestly clear that Claimant Kincade was able to reach his foreman to obtain proper authorization to report late for work, nor is it clear that procedures and instructions were adequate, in the circumstances of this case, to enable Claimant to comply with the rules concerning tardiness or absenteeism. In the opinion of the Board, these factors call for mitigation of the discipline.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The Carrier shall reinstate Claimant Trackman W. B. Kincade, but without pay for time lost.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983