

Joseph Lazar, Referee

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) AND
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former Fort Worth
 & Denver Railway Company)

1. That the Carrier violated the Agreement when it suspended Trackman W. W. Sanders for a period of thirty (30) days commencing June 11, 1984 through July 10, 1984 inclusive, said action being unduly harsh and in abuse of discretion.
2. The Carrier will now be required to compensate Mr. W. W. Sanders for all wage loss suffered and clear his records of any charges.

Claimant Trackman W. W. Sanders, with seniority date of May 20, 1980, was assigned as a Trackman working on Extra Gang #1 near Tascosa, Texas on April 30, 1984. On May 29, 1984, Claimant was advised by Carrier: "This is to advise you that an entry is being placed on your personal record and you are being suspended from service of the Burlington Northern Railroad Company for thirty days, from 12:01 A.M., June 11, 1984, to 11:59 P.M., July 10, 1984, inclusive, for violating Rule 570 of the Burlington Northern Safety Rules Book for your failure to obtain permission before absenting yourself from duty on April 30, 1984."

The Transcript of Investigation shows the following answers by the Foreman supervising Claimant on April 30, 1984:

"Q. If a member of your gang under your supervision asks for and receives permission to receive permission to be absent from work, are you the person that is designated for them to get this permission from?

A. Yes, sir.

Q. Do you allow trackmen under your--on your gang--or under your supervision when necessary to be absent if they have the proper permission?

A. Yes, sir, most of the time.

Q. In other words, a person under your supervision must get permission from you before they can absent themselves. Is this true?

A. Yes, that's right.

Q. On April 30, 1984, did Mr. Sanders report for duty at the proper time?

A. No, sir.

Q. Did Mr. Sanders request permission to be absent from duty from you at any time prior to the designated starting time on April 30th?

A. No, sir." (Tr., p. 3).

The Transcript of Investigation shows the following answers by Claimant Sanders:

"Q. Okay, on April 30th, were you assigned as a Trackman on this Extra Gang No. 1?

A. Yes.

Q. Did you report for duty that day?

A. No, I didn't.

Q. Did you obtain permission from anybody prior to the designated starting time that day to be absent?

A. No." (Tr., p. 9).

The Employees Statement of Facts states, in part:

"On April 29, 1984 Claimant departed his home in Fort Worth, allowing ample time to reach Amarillo, Texas where he would

meet with the balance of Extra Gang #1 and travel on to the work location at Tascosa, Texas. Unfortunately Claimant experienced automobile trouble which prevented him from meeting the remainder of the Gang at Amarillo. However, because of other employees being absent on the same date, Foreman Moss instructed the Gang's Timekeeper to return to the motel located at Amarillo in an effort to have all of the employees return to the job site. Claimant testified that he explained to the Timekeeper about his automobile problems and that, in order for Claimant to attend work for the remainder of the week, it would be necessary that he remain in Amarillo and have the necessary repairs made to his automobile. On the following day when Claimant returned to work, he discussed the matter with the Carrier's Assistant Roadmaster who seemed to fully understand that Claimant had not voluntarily absented himself from his position but was prevented from working due to circumstances beyond control."

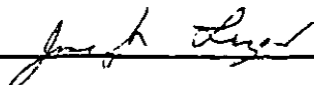
The Board has scrutinized the Transcript of Investigation for evidence of the alleged car trouble, but has found none. There is nothing in the record to identify the nature of the car trouble, when or where it might have occurred, what the repairs might have been, when or by whom the repairs might have been done, etc. Nothing.

The Claimant suggests in the Transcript of Investigation that he was stranded: "If on the day that I was absent I was stranded, you know,..." (Tr., p. 6). Yet, it is clear that he spoke to the Timekeeper about 10:00 to 10:30, allegedly informing him of the car trouble. (Tr., p. 7) "Just saying that it was possible that I was stranded and I wasn't able to reach you out there--8:00 o'clock, and I finally told the Timekeeper to come back and tell you that--that's why I was absent, but you say he didn't" (Tr., p. 7). Conceivably, Claimant might have been stranded, but it is clear that he was physically present at the motel when the Timekeeper came. Claimant had the opportunity to go to the work site with the Timekeeper, it appears, but chose not to do so. The Board does not regard Claimant's absence from work as being due to circumstances beyond control.

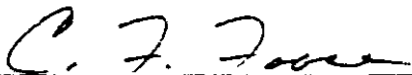
In the light of Claimant's prior work record showing discipline for absenteeism, the thirty days suspension in this case was not excessive.

A W A R D

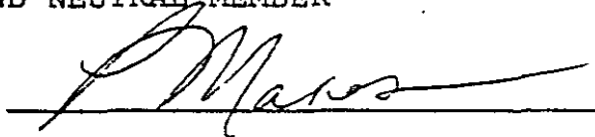
1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman W. W. Sanders is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



L. MARES, CARRIER MEMBER

DATED: December 17 1985

