

## PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 11

CASE NO. 11

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
TO ) and  
DISPUTE ) BURLINGTON NORTHERN (Former Joint Texas Division)

**STATEMENT**  
**OF CLAIM:**

1. That the dismissal of Trackman W. C. High was in violation of the current Agreement, said action being arbitrary, capricious and without justification based on the testimony at the investigation.
2. That Claimant now be restored to the service with seniority, and all other rights restored unimpaired and that he be compensated for all wage loss suffered during the intervening period.

**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. C. High, with an employment date of November 21, 1980, was dismissed from service of Carrier on August 9, 1982, for violation of Rules 19, 563, 564, 570, 573, 585 and 589 of Burlington Northern Safety Rules, in connection with an altercation resulting in injury to a fellow employee on Monday, July 12, 1982, near the depot at Tomball, Texas; failure to report promptly a personal injury allegedly sustained while on duty as Trackman on Extra Gang No. 1, Tomball, Texas, Monday, July 12, 1982; for absenting himself without proper authority from his position of Trackman, Extra Gang No. 1., Thursday, July 15, 1982, and for threatening Foreman David Brooks with bodily harm and harassing him with abusive language in the vicinity of his home at Teague, Texas, about 10:45 p.m., Wednesday, July 14, 1982, as evidenced by formal investigations held Wednesday, July 21, 1982, and concluding investigation held on July 27, 1982, at Teague, Texas.

The first of the incidents involved occurred at approximately 1:30 P.M., July 12, 1982, when claimant entered into altercation and attacked a fellow employee, Trackman F. R. Johnson, with a pair of tie tongs inflicting puncture wounds which resulted in secondary infection and loss of four days work by Trackman Johnson. Following proper notification to attend investigation called to ascertain and develop the facts surrounding the incident, claimant failed to appear at the hearing held 1:00 P.M., July 21, 1982. The testimony adduced at the hearing was uncontroverted. The evidence of record supports a finding that claimant violated BN Safety Rules 19, 563 and 564.

A second investigation was held at 4:00 P.M. on July 21, 1982 (concluded on July 27, 1982) regarding incidents on dates of July 14, 15 and 16, 1982, for which claimant was found in violation of BN Safety Rules 19, 563, 564, 570, 573, 585 and 589, and dismissed on August 9, 1982. Claimant was absent from the concluding investigation held on July 27, 1982. Hereinbelow is account of incidents involved:

On July 14, 1982, claimant was involved in an incident with his foreman, Mr. D. F. Brooks, and was charged with threatening Foreman Brooks with bodily harm and harassing him with abusive language in the vicinity of the foreman's home at Teague, Texas. Testimony reveals that Claimant paid a visit to Foreman Brooks' home about 10:45 P.M. on night of July 14, 1982, under the pretense of picking up his paycheck, and instead began questioning Foreman Brooks about the upcoming investigation involving the tie tong incident of July 12, 1982. Foreman Brooks then testified that claimant told him if he lost his job the foreman "would be the cause of it". Claimant then became boisterous, quarrelsome, threatening and abusive to his supervisor. The evidence is clear that Claimant was in violation of BN Safety Rules 19, 563 and 564

On July 15, 1982, claimant was absent from duty, for which he was cited for taking leave without proper authority. Testimony into this incident is conclusive that claimant's supervisor did not know where claimant was on the date of July 15, 1982, and that no attempts were made to obtain authorization for such absence. The evidence supports claimant's violation of BN Safety Rule 570: "Employees must report for duty at the designated time and place. . . They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

On July 16, 1982, claimant filed a Report of Personal Injury, Form 12504, alleging he sustained a personal injury on July 12, 1982, in his altercation with Trackman F. R. Johnson. Testimony shows claimant's dereliction of duty when he did not promptly complete Form 12504 before his tour of duty ended on July 12, 1982. Furthermore, testimony shows claimant was dishonest in alleging he was injured on July 12, 1982, and testimony and evidence proved he failed to give a factual report of incident and injury involved. Claimant was correctly found in violation of BN Safety Rules 573, 585 and 589.

The evidence is clear from testimony presented, as well as from the record as a whole, that claimant was in violation of Carrier's safety rules as cited for incidents involved.

In the opinion of the Board, the violations of Carrier's safety rules fully warranted discipline action taken by the Carrier, especially when one considers the serious nature of the charges and claimant's short tenure as an employee (less than two years service at time of dismissal). He is thereby undeserving the consideration due long time employees of the service.

A W A R D

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

  
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JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
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C. F. FOOSE, EMPLOYE MEMBER

  
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B. J. MASON, CARRIER MEMBER

DATED: April 3, 1984