

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 13
CASE NO. 13

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) and
DISPUTE) BURLINGTON NORTHERN (Former Joint Texas Division)

STATEMENT
OF CLAIM:

1. That the Carrier violated the provisions of the current Agreement when on August 20, 1982 it placed a letter of censure on Mr. J. B. Gore's personal record.

2. That the letter of censure be removed from Claimant's record and that it be cleared of all charges.

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.

Section Laborer J. B. Gore, an employee of this Carrier since February 3, 1981, was given a letter of censure on August 20, 1982, placed upon his personal record, "for violation of Rule 570 of Burlington Northern Safety Rules, in connection with absenting yourself from duty, and from company property, without proper authority, on Friday, June 25, 1982 while employed as trackman assigned to Rosslyn Section W-102, as evidenced by formal investigation afforded you on Friday, July 23, 1982 at Teague, Texas."

Burlington Northern Safety Rules and General Rules, Form 15001, Rule 570, reads:

"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."

On Friday, June 25, 1982, Claimant's assigned work hours were from 7:00 A.M. to 3:30 P.M. Claimant testified, in response to the question, "Did you have authority from Foreman Sikes or Track Supervisor Curry to leave the property at Tomball at approximately 2:45 to 3:00 p.m., Friday, June 25, 1982?", with the answer: "No." (Tr., p. 36).

Claimant testified, "Yes, sir", in response to the question, "You stated you left Tomball at approximately 2:45 p.m." (Tr., p. 13). The Relief Foreman, Mr. T. W. Sikes, testified that after looking for Claimant at Tomball, "I left Tomball at ten to three." (Tr., p. 24). The evidence of record supports the finding that Claimant left the property at Tomball at approximately 2:45 p.m. without proper authority.

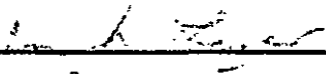
The Organization argues that Claimant did not have his meal period prior to departing from Tomball and travelling to Roans Prairie to obtain a meal for which he had not been given time during the regular hours of service. Also, the argument is made that Claimant was instructed by the Track Supervisor and by the Relief Foreman to avoid overtime, and this could not have been avoided if Claimant had not left the property when he did. Additionally, it is argued that Claimant was in a position of having no transportation from Tomball other than with the employee he was assigned to, and it was a reasonable exercise of judgment, in the circumstances, for Claimant to accept the ride with his fellow employee when he did although this was prior to the end of his tour of duty.

The Board has weighed these considerations with care. The record is clear that both the Track Supervisor and the Relief Foreman expected the Claimant to wait at Tomball for further instructions, and, if need be, for transportation. Claimant, however, failed to wait. If he had waited just a few minutes, perhaps only five minutes, he would have seen his Relief Foreman and his problems of eating and transportation would have been taken care of properly.

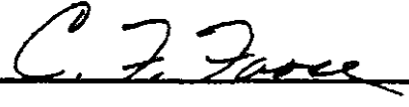
Rule 570 requires that employees "must not absent themselves from duty...without proper authority." This is a most important rule. Failure to comply with this rule is at the peril of the violator. The discipline of the letter of censure is appropriate and commensurate with violation, and clearly is not arbitrary or capricious.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman J. B. Gore is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: April 3, 1955