

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 15

CASE NO. 16

<u>PARTIES</u>)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
<u>TO</u>)	and
<u>DISPUTE</u>)	BURLINGTON NORTHERN RAILROAD (Former Joint Texas Division of Chicago, Rock Island and Pacific-Fort Worth and Denver Railway)

STATEMENT
OF CLAIM:

1. That the Carrier's decision to suspend Machine Operator Mr. J. P. Moreno from its service for a period of thirty (30) days was without just and sufficient cause, in abuse of discretion and in violation of the terms of the current Agreement.
2. That the thirty (30) days suspension from service be set aside and Claimant's record cleared of all charges with compensation for all wage loss suffered because of the wrongful suspension.

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.

Machine Operator Mr. J. P. Moreno, Claimant, an employee of this Carrier since November 6, 1972, is employed within the Track Sub-Department on the former Joint Texas Division of the Chicago, Rock Island & Pacific Railroad Company and the Fort Worth & Denver Railway Company, now owned and operated by the Burlington Northern. On May 5, 1983, he was given notice of "suspension for thirty (30) days from the service of the Burlington Northern Railroad for violation of Rule 570 of the Burlington Northern Safety Rules and General

Rules in connection with absenteeing yourself without authority February 1 through 4, 1983, February 17, 1983, March 28, 1983 and April 4 through 7, 1983."

The Foreman of Extra Gang No. 1, Claimant's immediate supervisor, testified, in answer to the questions, "On February 1, through 4, 1983, was Mr. Moreno present for duty on each of those days?" "No, he wasn't"; "Did Mr. Moreno have your authority to be absent on those days?" "No, he didn't." (Tr., p. 4). Claimant's answers to questions are:

"Q. Mr. Moreno, were you assigned to Extra Gang No. 1 as Machine Operator on the period of time February 1, 1983 through and including April 7, 1983?

A. Yes, sir.

Q. You have heard testimony that you were absent on February 1 through 4, 1983, inclusive. Did you request and receive authority to be absent from your duty from any supervisor prior to being absent on those days?

A. The police take my car and put in storage for four days, and I couldn't walk to work.

Q. Did you make any attempt to contact any supervisor to tell them why you were absent?

A. One time I was telling (Roadmaster) that if sometime I have trouble with the car and I can call him or somebody else, and he told me only I needed to call my boss man. We were working between Singleton and Shiro and my foreman has not the telephone so I can explain him my problem.

Q. Did you attempt to notify anyone else?

A. Not, because (Roadmaster), I don't call anybody else, he told me call my boss man, that is what he told me." (Tr. pp. 11-12.)

The facts are clear that Claimant was absent from duty February 1 through February 4, 1983, and made no effort to obtain permission for his absenteeism. Claimant's statement, "my foreman has not the telephone" is contradicted by his foreman's statement: "...I have had my phone for 9 years almost 10 years and if anyone needed to

call me they could ask information or look it up in the book. We were working near Shiro and at the time if someone needed to give me a message, or call me they could have by calling Shiro Depo. It was a operator there all day every day." (Carrier's Exhibit No. 1(d)).

Rule 570 of the Burlington Northern Safety Rules and General Rules, Form 15001, issued 8-81, 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."

Claimant violated Rule 570.

The Claimant's foreman testified that Claimant was absent without requesting or receiving permission on the dates of February 17, 1983, March 28, 1983 and April 4 through 7, 1983. Claimant has testified that on February 15, he did request and receive permission of his foreman to be absent on February 17, and he further testified that he was "sure I tell him". As to the dates of April 4 through April 7, 1983, the testimony indicates clearly that Claimant's medical condition did not enable him to come to work; but there is a conflict of testimony as to whether he or his wife did in fact make an attempt to inform supervision that he was unable to come to work.

Claimant's absenteeism on April 4 through April 7, due to medical reasons, would not be a proper basis for discipline under the Agreement. Nevertheless, it is problematic whether Claimant or his wife in fact attempted to inform the Carrier of Claimant's absence.

Inasmuch as Claimant's foreman had a telephone by which he could have been informed on any of the dates in question, and inasmuch as Claimant testified that his foreman "has not the telephone so I can explain him my problem", Claimant's credibility is in serious question.

In the circumstances, with established violation of Rule 570 on February 1 through February 4, 1983, and even though adequate medical justification appears for the absence April 4

through April 7, the Referee remains unpersuaded that Claimant requested and obtained permission for absence on February 17 and March 28, or did in fact inform or attempt to inform the Carrier of his medical condition on April 4, 1983.

Absenteeism is a grave offense, and in a proper case may justify the extreme discipline of discharge. The record shows that Claimant received a five day suspension for violation of Rule 570 on January 29, 1982, and it further shows that Claimant received a ten day suspension for violation of this same Rule 570 on June 23, 1982. In the Carrier's administration of progressive discipline, the thirty (30) day suspension of Claimant for violation of Rule 570 in the instant case is not excessive.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The Claim of Machine Operator Mr. J. P. Moreno is denied.

Joseph Lazar
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

C. F. Foose
C. F. FOOSE, EMPLOYEE MEMBER

H. H. Payne
H. H. PAYNE, CARRIER MEMBER

DATED: April 17, 1985