

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 19

CASE NO. 20

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

STATEMENT
OF CLAIM:

1. That the Carrier violated the provisions of the current Agreement when it suspended Bridge & Building Helper Mr. K. M. Owen for a period of thirty (30) days beginning July 1, 1984 through July 30, 1984.
2. The Carrier will now be required to expunge all charges from Claimant's record and compensate him for all wage loss suffered during the above referred to 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.

Claimant Bridge & Building Helper K. M. Owen was employed as a B&B Helper on Carrier's B&B Gang J-2, Richards, Texas. He has an employment date as B&B employee as of December 7, 1981. On June 26, 1984, the Carrier advised Claimant "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 (30) days from 12:01 A.M., July 1, 1984, through 11:59 P.M., July 30, 1984, for violating Rule 570 of the Burlington Northern Safety Rules Book, for your failure to obtain permission before absenting yourself from duty from March 2, 1984 until June 12, 1984."

Rule 570 of the Burlington Northern Safety Rules 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."

The transcript of record shows that Claimant was given permission by his Supervisor to go home, for reason of sickness, on March 2, 1984, after being on duty just one hour. The testimony of the Supervisor is that subsequent to March 2, there was no contact with the Claimant except for March 15 when Claimant called to ask for his check, and that there was no contact with Claimant subsequent to March 15. The Supervisor gave no permission to Claimant to be absent subsequent to March 2.

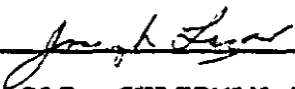
The transcript shows the following testimony of Claimant:

- "Q. On the day subsequent to March 2nd, have you reported for duty on any of them days?
- A. No sir.
- Q. Have you obtained permission or talked to anyone concerning obtaining permission pertaining to your absence from duty?
- A. No sir, I haven't.
- Q. Have you in the past, ever requested permission to be absent and then been granted permission?
- A. Yes sir, I have.
- Q. You stated you did not receive permission to be absent from duty?
- A. Not subsequent to March 2nd.
- Q. Mr. Owens, can you give us a reason or will you speculate why you haven't reported for duty since March 2nd?
- A. I just went through some personal troubles. I was detained in Mexico over a legal matter and by the time I got back, I had already missed two weeks of work, then I wrecked my car and figured it wasn't much sense in coming back and missing that much, they was probably already to fire me." (Tr., p. 5).

The evidence of record is conclusive that Claimant violated Rule 570 of the Burlington Northern Safety Rules. In the circumstances of this case, the claim must be denied.

A W A R D

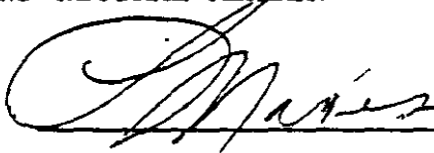
1. The Carrier is not in violation of the Agreement.
2. The claim of Bridge & Building Helper Mr. K. M. Owen is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



L. MARES, CARRIER MEMBER

DATED: December 17, 1985