

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 7

AWARD NO. 7

Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "(1) The dismissal of B&B Helper C. Tribble August 14, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 15-3 MW-20 1/7/80).
- (2) That B&B Helper C. Tribble be paid for all time lost and his record cleared."

The Claimant, Charlie Tribble, entered the Carrier's service in October, 1955. He has been a B&B Helper with

headquarters in Cicero, Illinois, since October, 1975. By letter dated July 6, 1979, Claimant was instructed to attend an investigation on July 16, 1979, in order to ascertain the facts and determine Claimant's responsibility in connection with his alleged failure to report at the designated time and place on July 2, 3, and 4, 1979. By letter dated July 13, 1979, Claimant was similarly instructed to attend an investigation on July 19, 1979, in connection with his alleged failure to report for duty at the designated time and place on July 5, 1979. The investigations were held on the scheduled days. The Claimant was present on both days and was accompanied by a duly authorized representative of the Organization. By letter dated August 14, 1979, Claimant was notified that he was dismissed from service effective that date, for violation of Rule 665 of the Carrier's Rules "...by failure to report for duty without authority on July 3 and July 5, 1979, while employed as B&B Helper, Gang 001, Cicero, Illinois." The dismissal notice stated that in assessing this discipline consideration was given to Claimant's "...previous record of Rule violations of a similar nature."

Carrier Rule 665 reads as follows:

"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."

Concerning the July 2, 3, and 4, absences, the record shows that on July 2, Claimant called the B&B shop at 6:40 a.m. (starting time was 6:00 a.m.) and spoke with the Foreman Warehouse and told him he would not be in that day. On July 3, Claimant called in and spoke with the Foreman Warehouse at 3:25 p.m., five minutes before normal quitting time. Claimant asked if he was scheduled to work on July 4. He was told that he was so scheduled and Claimant said to tell the B&B Foreman that he would be at work on July 4. On the morning of July 4, Claimant called in at 5:50 a.m., 6:00 a.m., 6:10 a.m. and 6:32 a.m. and attempted to speak with the B&B Foreman, who was unavailable. In the 6:32 call Claimant told the Foreman Warehouse to relay the message to the B&B Foreman that he was going to the dentist because his jaw was swelling.

The Foreman Warehouse testified that with the exception of the 5:50 a.m. call on July 4 which was taken by another officer of the Carrier, he took all the telephone calls from the Claimant on July 2, 3, and 4. On July 2 and 3, Claimant simply told him he would not be in; he did not ask for permission to be absent or give a reason. On July 4, Claimant did not request permission to be absent, but did indicate in the 6:32 a.m. call that his jaw was swelling. The record contains a dental certificate, dated July 12, 1979, submitted by the Claimant indicating he was under a dentist's care from July 2 through July 4, "emergency extraction associated with acute abcess."

At the investigation, Claimant acknowledged that he was aware that the Foreman Warehouse had authority to grant permission to be absent. His position was that he thought that he had been following the proper procedure to authorize his absence from work, even if he did not expressly request authorization. He also stated that he thought he had informed the Foreman Warehouse as early as his phone call on July 2, that his mouth was sore. Finally, he alleged that on the preceding Friday, June 29, he informed the B&B Foreman that he might have to have a dental appointment on Monday (July 2). The B&B Foreman did not recall that conversation.

On July 5, 1979, Claimant was scheduled to begin work at 7:00 a.m., but he did not report for work. Witnesses testifying for the Carrier stated that he did not call in that day. Claimant asserted that the reason for his absence was foot trouble. He submitted a medical statement dated July 17, 1979, that he had "...been under conservative therapy for ligamentous fracture of the fifth metatarsal phalangeal joint left foot (July 5th)." Claimant states that he tried to call the shop four times that morning. The first time was either 6:05 a.m. or 6:15 a.m. and the last time about 7:45 a.m., when on his way to his doctor. He was unable to get through because either no one was in the shop or the line was busy. He did not try to call again after seeing his doctor (about 10:00 a.m.) because he "...knew it was too late."

In its letter of dismissal dated August 14, 1979, the Carrier cited only Claimant's absences of July 3 and July 5, thus dismissing the charges concerning July 2 and July 4. Even if this Board concedes that the Claimant had a dental problem, he fell far short of his responsibility to his employer on July 3. He did not call in that day until 3:25 p.m., five minutes before the end of the normal work day. His stated reason for this delay was that he slept late and then had to go to the dentist. This may be sufficient to explain a late call-in, but not one which occurs five minutes prior to the end of work.

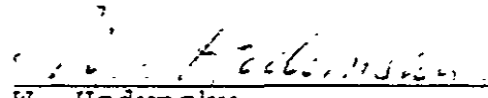
Conceding further that Claimant had a problem with his foot on July 5, he was, nevertheless, required to notify supervision prior to absenting himself from work to seek permission or at least give notice. Even if one accepts his testimony that he made four unsuccessful calls that morning (and there is only his testimony for support, he did not get the name of the Carrier telephone operator he claims to have spoken with, nor did he ask that his call be verified) his failure to call after seeing his doctor indicates a lack of concern for his employment. It is also inconsistent with his calling the shop as late as 3:25 p.m. on July 3.

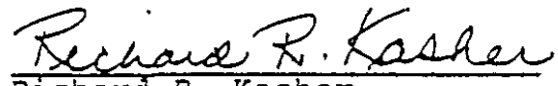
The Carrier has met its burden of proof in establishing Claimant's violations of Rule 665 on July 3, and July 5, 1979.

Although Claimant may have had legitimate medical and dental reasons for being absent from work on those days, he did not meet his obligation to seek authorization or give adequate notice. In assessing the degree of discipline, the Carrier has properly reviewed Claimant's past record which shows repeated violations of the same rule and progressive, corrective discipline. Accordingly, this claim must be denied.

AWARD: Claim denied.


F. H. Funk,
Organization Member.


W. Hodynsky,
Carrier Member


Richard R. Kasher,
Chairman and Neutral Member

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