

PUBLIC LAW BOARD NO. 3460

Award No. 22
Case No. 22

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "(1) The dismissal of L. O. Mitchell, Jr., laborer, of Tie Gang No. 8 on July 31, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Laborer L. O. Mitchell, Jr., be reinstated with all seniority and other rights unimpaired and be compensated for all time lost and his dismissal be removed from his personal record."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was charged with being absent from duty without proper authority on June 26, 1980, and following an investigation held on July 10, 1980, was dismissed from service. The record indicates that on June 26, 1980, prior to the commencement of his regular shift, claimant notified his foreman that he could not attend work that day because he was hungry. His supervisor told him that if he would get on the bus and go to work, the supervisor would pick him up a lunch on the way to the job site. The foreman did as he promised, thinking that the claimant would be on the bus, but claimant failed to report to work at all that day.

Petitioner argues that claimant did, indeed, present himself at work but told his supervisor that he did not feel well enough to work because he was hungry. Therefore, he did, indeed, present himself and was not absent without authority. Furthermore, according to the Organization, the penalty in this instance was harsh and excessive under the circumstances. Carrier, on the contrary, argues

that this was the third instance of this claimant being absent without proper authority within a relatively short span of employment, some fifteen months, and, furthermore, that the record in this instance was clear that he did not have permission to be absent from work. Therefore, the penalty was appropriate.

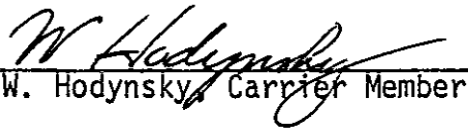
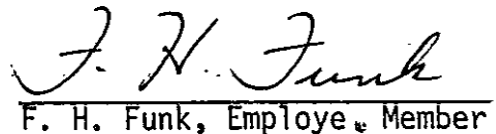
As the Board views the transcript, claimant admitted violation of Carrier rules and there is no doubt but that he was guilty of the charges. In view of his relatively short service and the fact that this was the third infraction of a similar order in his short span of service, the discipline accorded him was wholly within proper bounds. For the reasons indicated, there can be no finding other than that the claim is without merit and must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman


W. Hodynsky, Carrier Member
F. H. Funk, Employee Member

St. Paul, Minnesota

May 22, 1985