

PUBLIC LAW BOARD NO. 3460

Award No. 55
Case No. 55

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. The dismissal of section man A.E. Hayes for alleged violation of rule 702, 702 (B) and General Rule A of the Maintenance of Way Rule Book, was excessive, unwarranted and without just and sufficient cause.
2. The claimant shall be reinstated with seniority and all other right unimpaired, and compensated for all time lost."

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.

The record reveals that claimant was charged with absence from work without proper authority, for the dates of October 27, 28, 29, 30 and 31 of 1980. Following investigation he was dismissed from service after having been found guilty by letter dated November 4, 1980. Mr. Hayes had been employed by Carrier for some 16 months prior to the incidents involved in this matter. He had been suspended once for 15 days for the same offense sometime prior to this incident.

The transcript of the investigation reveals a number of important elements. First Mr. Hayes indicated that his reason for absence was that he was ill and had vehicle problems. He candidly admitted that he had been absent without reporting for the days involved. Further the testimony indicated that Hayes had been instructed by both his foreman and the roadmaster to call in when he was unable to report. In view of the fact that he did not call in for any of the days charged, he was asked the reason for such failure. His response was that he just kept forgetting about it. Further, the record indicates that the claimant indicated in the investigation that he was involved in getting his own business going.

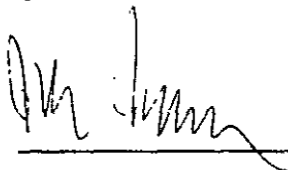
The Petitioner argues that there was no progressive discipline in this situation since the only infraction charged against claimant was that of one prior suspension. Further, Carrier had not produced evidence of that record during the investigation. The Carrier's position essentially is that this is a short-service employee with repeated violation involving the same misconduct. From Carrier's point of view, this was an employee who did not conform to the rules and there is no place for him in their employment.

The Board finds that the fact that the Carrier did not introduce claimant's record into the transcript of the investigation was immaterial. It is well established and requires no documentation

or citation that a Carrier may indeed, following a finding of guilt, refer to a claimant's past record in order to determine the quantum of punishment required. In this instance, there was no impropriety in Carrier referring to claimant's record subsequent to the investigation. With respect to the infraction itself, the Petitioner's only defense was that in view of the violation and Petitioner's record, the discipline accorded him was excessive. The Board does not agree. Under the circumstances, in view of claimant's short service, and most importantly the fact that he did not even bother to call in to indicate his absence, makes Carrier's position with respect to the nature of the discipline an acceptable one. The Board does not believe it should tamper with disciplinary decisions made under circumstances such as that herein. The discipline decision by Carrier was reasonable under the circumstances and must be upheld.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F.H. Funk, Employee Member

St. Paul, Minnesota

December 12, 1986