

PUBLIC LAW BOARD NUMBER 3566

Award Number: 17

Case Number: 17

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Trackman K.W. Weaver requesting that Carrier return him to service immediately with pay for all time lost and further requesting that Carrier remove the charge from his service record.

FINDINGS:

On May 24, 26 and 31, and on June 1 and 8, 1983, Claimant failed to report for duty as assigned on Tie Gang T-2-11. Claimant was dismissed from service on June 9, 1983. At the Organization's request, a hearing was held in order to investigate the circumstances surrounding Claimant's dismissal. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had violated General Rule 502 and that his dismissal was therefore justified.

The Organization filed a claim protesting Carrier's actions and requesting that Claimant be returned to service with pay for time lost and with seniority and all other rights intact. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for

resolution.

The issue to be decided in this dispute is whether Claimant was discharged for just and reasonable cause, and if not, what should the remedy be.

The record shows that Claimant was dismissed from service on November 19, 1982, and later reinstated on a leniency basis. The cause of that discipline was Claimant's violation of Carrier's Rule 702. After his return to service, Claimant failed to report for work as assigned on no less than five separate occasions. On none of those dates did Claimant receive permission to be absent. After Claimant failed to report for duty on May 31 and June 1, 1983, he received a three-day suspension. When he again failed to report on June 8, he was removed from service.

At the hearing, Claimant gave reasons for each of his absences. However, the fact remains that each absence violated Rule 702, since in each case Claimant was absent without authority. In any event, an employer is not required to retain in service an employee who is repeatedly absent, regardless of what reasons the employee may have for the absences. In the present case, Claimant was progressively disciplined and was given ample opportunity to demonstrate his ability to report for work as assigned. Instead, Claimant demonstrated only that he was either unwilling or unable to report for duty as ordered. Consequently, it cannot be held that termination was unduly harsh or excessive under all the circumstances. The claim is therefore denied.

AWARD:

Claim denied.

Nicholas Kumar
Neutral Member

W. Hedgcock
Carrier Member

Ma. Christie
Organization Member

Date: February 11, 1985