

PUBLIC LAW BOARD NUMBER 3566

Award Number: 6

Case Number: 6

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim in behalf of Trackman B.P. Presnell for payment for all time lost and removal of charges from Trackman Presnell's record as a result of his suspension from service on December 20, 1982.

FINDINGS:

On December 18, 1982, Foreman T.M. Kirn instructed Claimant to report for work on the following day, a Sunday. Claimant did not report for work as directed. Roadmaster R.D. McCafferty assessed Claimant a thirty-day actual suspension on December 20, 1982.

At the Organization's request, a hearing was held in order to investigate the charges against Claimant. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had failed to report for work as instructed, and that the discipline assessed against him was justified. The Organization filed a claim protesting Carrier's actions and requesting that Carrier clear Claimant's record of the charges against him and compensate

Claimant for all time lost as a result of his suspension. 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 suspended for just and reasonable cause; and if not, what should the remedy be.

The record shows that in late December of 1982 Carrier was faced with an emergency situation in the area in which Claimant was employed. As a result, each member of Foreman Kirn's gang was assigned to work seven days each week. There is some evidence that when McCafferty was first assigned to the area as Roadmaster, Claimant, a minister at a local church, had obtained permission from him to be absent from work on Sundays in non-emergency situations when other employees could be found to take his place. There is no evidence, however, that Claimant had permission to absent himself from Sunday work in emergency situations when the entire gang was needed. In any case, Claimant had been disciplined the previous week for failing to protect his Sunday assignment; Claimant clearly knew that he did not have permission to absent himself on December 19, 1982. Claimant nevertheless chose not to report for work on that date without first attempting to obtain permission for his absence.

For the reasons stated above, it is the opinion of this Board that the record contains clear and convincing evidence of Claimant's failure to report for work as assigned. Since this was Claimant's second offense of this nature within a very short period of time, it cannot be held that the discipline assessed was

overly harsh or excessive under the circumstances. Consequently, the claim must be denied. It should be noted, however, that his holding is not intended to constitute an adjudication of Claimant's right to freely practice his religion. Consideration of such questions is beyond the jurisdiction of this Board. The holding in the instant case merely represents a finding that the assessment of discipline against Claimant was not improper under either the Agreement between the parties or Carrier's General and Safety Rules.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: February 1, 1955