

PUBLIC LAW BOARD NO. 4104

Case No. 40

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way
Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Section Laborer, F.D. Manley for alleged 'violation of Burlington Northern Safety Rule 570' was without just and sufficient cause. (System File 3 Gr GMWA 85-3-19B).

2. The Claimant shall be reinstated with seniority and all other benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a Section Laborer, was assigned to the Abia, Iowa section gang when this dispute arose. On June 7, 1984 Claimant did not report for his position at 7:00 a.m. Additionally, he did not report for duty on June 13, 1984. On neither occasion, did he contact Carrier.

As a result of the incidents, Carrier conducted an investigation beginning on June 20, 1984. On July 16, 1984 Claimant was notified by Roadmaster Thornburg, that he was dismissed from service.

The Organization asserts that Claimant was absent from duty on both dates because of illness. On June 7, 1984 he was unable to contact Carrier because he did not have a telephone and he was not able to travel to a public telephone. It argues that Claimant reported for duty on the following day and informed his supervisor of the reason for his absence. On June 13, 1984, Claimant became ill during the night and was again unable to contact Carrier because of the lack of a telephone. The Organization maintains

that a doctor's note was given to his supervisor the following day. Therefore, the Organization argues that Claimant was absent from work on both dates because of illness and should not be disciplined for such absences. It asks that the claim be sustained.

Carrier, on the other hand, asserts that dismissal is an appropriate penalty. It contends that there is no dispute that Claimant was absent from duty on June 7 and 13, 1984, that he did not have the proper authority to be absent and that he did not notify the Carrier that he would be absent. It further maintains that Claimant provided no support for his contention that he was too sick to even contact Carrier regarding his absence from work. Under such circumstances, Carrier argues that it properly found Claimant guilty as charged. As such, Carrier insists that dismissal is appropriate and justified. Thus, for the foregoing reasons, it asks that the claim be denied.

The Board concludes that the claim must be denied. There is an obligation on the employee to inform Carrier that he will be absent from duty. Claimant failed to do so on both dates with an attempt to justify his actions because he had no telephone. Such is not a legitimate excuse. The record is clear that Claimant was absent from duty on two days, he did not have the proper authority to be absent, and did not notify Carrier that he would be absent.

We are convinced that the dismissal imposed by Carrier is an appropriate penalty. His prior record included five previous assessments of discipline, four of which were for the same offense of unauthorized absence. This Board finds that the penalty of

dismissal was neither arbitrary, capricious, nor unreasonable. Accordingly, the claim must be denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

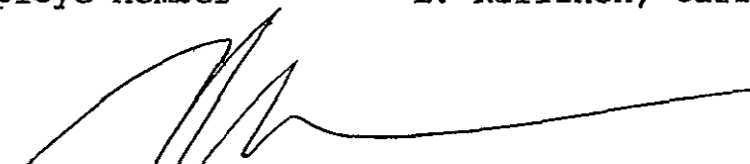
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin E. Scheinman, Neutral Member

1/20/90