

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 24
)	
vs)	Award No. 20
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Sectionman A. J. Krone for alleged absence without proper authority was excessive, unwarranted and without just and sufficient cause.
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.

- FINDINGS

On July 8, 1982 the Claimant was advised to attend an investigation on July 15, 1982 to determine facts and place responsibility, if any, in connection with his alleged absence from duty without authority on July 1-2 and 5-8, 1982. After request for postponement by the Claimant the investigation was held on August 9, 1982 with the Claimant in absentia. After the investigation was held the Claimant was notified on September 7, 1982 that he had been found in violation of Rule 702 of the Rules of the Maintenance of Way Department and he was dismissed from service. This Rule reads as follows, in pertinent part:

(e)mployees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority.

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After the discipline was appealed by the Organization up to and including the highest Carrier officer designated to hear such this case has been docketed before this Public Law Board for final adjudication.

At the time of the alleged absenteeism the Claimant was a section laborer. According to testimony presented at the investigation by the foreman at Parkwater, Washington to whose crew the Claimant had been assigned, the Claimant failed to show for his assignment on the days at bar without contacting the Carrier.^{1/} According to this witness the last time the Claimant had called him was on July 28, 1982 to report that he would be about "...20 minutes late." The Claimant did not show on that day nor did he make contact with his immediate supervisor thereafter until he received the notice for the investigation. The Claimant's absences on the days in question is further corroborated, in the record, by testimony by a roadmaster. On merits, therefore, there is sufficient substantial evidence in the record to warrant the conclusion that the Claimant is guilty as charged. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. v Labor Board 305 U.S. 197, 229).

The only issue, therefore, to be addressed by the Board is whether the discipline levied by the Carrier was reasonable. Numerous Awards emanating from arbitral forums in the railroad industry have ruled that a Claimant's past record may be used when determining the appropriateness of the quantum of discipline (Second Division 6632, 8022, 8527; Third Division 21043, 22320 inter alia). The Claimant's past work record is part of the record before this Board. An analysis


^{1/} It should be noted for the record that July 5, 1982 was a holiday. The Claimant was not paid for that day because he had not worked the day before and the day following this holiday.

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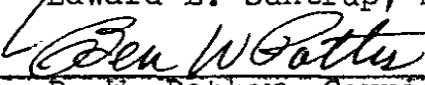
of this record shows that it is not a good one. Prior to his dismissal on September 7, 1982 the Claimant has a number of disciplines because of Rule 702 violations and this discharge was his third one as employee for the Carrier. In view of this it must be concluded that the discipline at bar was neither arbitrary nor unreasonable and the Board cannot find sufficient grounds for disturbing it. The claim cannot be sustained.

AWARD

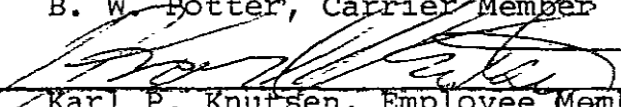
Claim denied.



Edward L. Suntrup, Neutral Member



B. W. Potter, Carrier Member



Karl P. Knutsen, Employee Member

Date:

March 9, 1987