

PUBLIC LAW BOARD NO. 5691

Case No. 61
Award No. 61

Parties to dispute:

United Transportation Union
and
Burlington Northern Railroad Company

Statement of Claim:

Request that Yardman C. G. Sarrett, Tulsa Terminal, be paid for all time lost beginning May 19, 1995, through and including June 7, 1995, paid for attending the investigation conducted on May 4, 1995, that any loss of fringe benefits be restored to him, and that any mention of the incident be removed from his personal record file.

Opinion of Board:

Claimant was working from the Yardmen's Extra board in the Tulsa Terminal on April 12, 1995, when he called the crew caller and requested to lay off. He was told that, based on instructions from the Terminal Superintendent, no one was permitted to lay off for personal reasons. After a short time, he called again and was given permission to lay off sick. The Carrier asserts that his actions constitute dishonesty, in violation of Operating Rule 1.6 Item 4.

Claimant's work record during his short career certainly has been less than exemplary. Both his personal record file and the crew calling records made part of this record indicate a pattern of poor attendance and an overall attitude of disdain for the requirements of his employer. He would be well advised to improve his performance, for such behavior allowed to continue will no doubt lead to serious consequences.

Despite the Claimant's poor work record, however, the transcript simply does not support the charge of dishonesty. He says that he became ill after his first conversation with Crew Caller Canada, was unable to contact the Trainmaster, and then called Canada again, laying off sick. This is not inconsistent with the tape-recorded conversations read into the transcript. While the circumstances may well be classified as suspect, suspicion alone does not meet the Carrier's burden of proof. We reluctantly sustain the claim.

Findings:

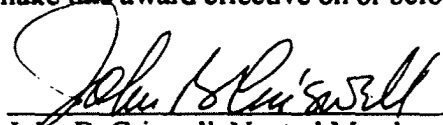
That the Agreement was violated.

Award:

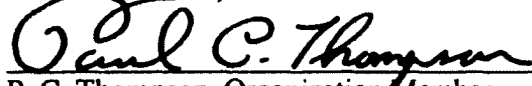
Claim sustained.

Dated this 26th day of June, 1998, at Springfield, MO.

Carrier is directed to make this award effective on or before 30 days.



John B. Criswell, Neutral Member



P. C. Thompson, Organization Member



R. A. Boldra, Carrier Member