

6-2593-2

PUBLIC LAW BOARD NO. 6102

Award No. 2
Case No. 2

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Burlington Northern Santa Fe Railway
(Former St Louis - San Francisco Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it unjustly suspended Mr. M. A. Brown from service for twenty days in connection with his alleged violation of MWOR 1.13 -- Reporting and Complying with Instructions, and MWOR 1.15 -- Duty -- Reporting or Absence, in connection with his alleged failure to comply with instructions and his alleged absence without authority on August 11 and 14, 1995.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record." [Carrier's File MWC 95-12-13AA. Organization's File B-2593-2].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction over the dispute herein.

On August 14, 1995, a Certified Mail notice was sent Claimant Mario A. Brown by Manager of Gangs R. C. Wagoner, with copies furnished the Organization's General Chairman, Vice General Chairman, and Assistant General Chairman. This letter charged the Claimant with alleged absence from duty and failure to comply with instructions from proper authority, in connection with his absence on August 11 and 14, and set an investigation for 1100 hours on Monday, August 28, 1995. The record includes a copy of a receipt for a Certified Mail article bearing a number corresponding to that shown on Mr. Wagoner's August 14 letter, signed "Mario Brown," and date of delivery August 15, 1995.

The August 28 investigation began at 35 minutes past the time set to commence. At that time, Claimant Brown had not yet arrived. Roadmaster R. R. McQueary stated he had not heard from Claimant since August 11. The Organization's Vice General Chairman was present to represent the Claimant, and stated that Claimant had not contacted him nor his office. After reading into the record Mr. Wagoner's August 14 letter, and entering it, along

with the Certified Mail receipts, as exhibits, it was noted that the Claimant had still not arrived, and the investigation proceeded. The Claimant did not appear at the investigation at all, nor was any communication from him noted in the record, other than his receipt for the Certified Mail notice.

We find there was compliance with the applicable provisions of Rule 91, the Discipline Rule, of the Agreement between the Parties. Proper notice was given the Claimant, for which he gave a receipt. His absence was at his own peril.

The record shows that Claimant was employed as a Trackman on Rail Relay Gang RP-15. Mr. McQueary, who presented the sole relevant testimony at the August 28 investigation, stated that the Claimant left a voice mail message for him on August 11, 1995, saying that he "didn't feel good," that he "wasn't breathing right," and that he was going to see a doctor on August 11. Mr. McQueary further stated that the Claimant did not work on August 14, nor any day thereafter, and had not communicated further with him. (These dates are Friday and Monday, respectively).

Mr. McQueary also stated that all employees on Gang RP-15 have been instructed to call him personally, at his home or at the motel where he is staying, when seeking permission to be absent from work. He further asserted that he had previously counselled the Claimant with respect to properly reporting when absence from work was necessary.

Substantial evidence was adduced at the investigation to support the charges. The Claimant was absent from work on the two subject dates. By his absence from the investigation, the Claimant failed to offer any defense, nor mitigation, nor did he seek, personally, or through his union representative, to obtain a postponement of the investigation.

On September 27, 1995, Claimant was advised of assessment of a twenty (20) day suspension, October 2 through October 27, 1995, as the consequence of evidence adduced at the August 28 investigation.

It is noted that the Claimant had a history of absenteeism since his employment in June, 1994, and that he had been counseled about properly reporting. Furthermore, less than a month before this occasion, he had been suspended for ten (10) days for absence without authority.

The Claimant made a belated effort to offer a defense on his own behalf, in a letter dated May 20, 1996. While his letter evokes some sympathy for his emotional plight, it comes too late. A more timely and effective course of action would have been to attend the investigation and there offer his defenses or, in the alternative, to seek, through his union representative, a postponement of his investigation until he could be present.

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A twenty (20) day suspension is not excessive in view of the Claimant's employment history, and the principle of progressive discipline.

AWARD

Claim denied:

Robert J. Irvin

Robert J. Irvin, Referee

April 20, 1998

Date

