

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 12/Award 12

Statement of Claim

Claim of the System Committee of the Brotherhood that:

1. That the thirty (30) day suspension of Frank Williams for his alleged absence without proper authority on June 10, 1994 was without just and sufficient cause, based on an unproven charge, and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

Background

The Claimant was advised on June 10, 1994 to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged absence from duty without authority on that same date. After an investigation into this matter was held on June 24, 1994 the Claimant was advised on July 13, 1994 that he had been found guilty as charged. He was assessed a thirty (30) day suspension, effective July 18, 1994 until and including August 16, 1994. He was also advised that he would not be allowed to return to work without obtaining clearance from the BNSF EAP counselor showing that he had complied with her recommendations and cleared for service. This discipline was

appealed by the Vice General Chairman with the Superintendent of the Minnesota Division in accordance with provisions of Section 3 of the Railway Labor Act and the operant Agreement. This appeal was denied. The claim was then appealed up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before this Board for final adjudication.

Discussion & Findings

A review of the record in this case shows that the Claimant never denied that he was absent from work on June 10, 1994. On this date he was assigned to a surfacing crew working the Twin Cities (Minnesota) Terminal as a Group 3 operator.

According to testimony at the investigation by the Roadmaster of the Northtown Terminal the procedures to be followed if an employee was going to be absent was to either contact his office, or the office of the Assistant Roadmaster, or the office employee, and if none of them were available to leave a message on the answering machine of any of three phones used by these three people. This is a long-standing policy and the numbers to call are known to all the employees working under this Roadmaster. The Roadmaster testified that he kept a log of all employees calling in to be absent and that such requests were normally granted if a request was a reasonable one. The Assistant Roadmaster was on a half day vacation on June 10, 1994 and the office worker was off part of the day for medical reasons. Both have, however, voice mails capabilities on their phones as noted above. So does the Roadmaster. There was no record of the Claimant

calling in on the day in question nor of anyone called in on the Claimant's behalf.

At the investigation both the Claimant and his wife testified. Testimony by the Claimant is that he was absent on June 10, 1994 but that he had "made arrangements" which in his mind were sufficient to have justified his having been absent. Those arrangements were for the Claimant's wife to have called in for him, stating that he would be absent on the day in question. According to the Claimant he had used this procedure in the past and it appeared to him that it was sufficient. He states that he was never told that it was improper for his wife to call in for him. Testimony by the Claimant's wife is that she called in sometime after 7:30 AM, but before 8:00 AM since she had to leave her home at that time, and left a message on a phone recorder which was answered by a recorded female voice. She states that her husband had asked her to do this about ~~about~~ ^{LR} 4:00 AM in the morning when he returned from retrieving his auto which had been stolen. The Claimant testified that he had worked the day before and was extremely tired from spending much of the night retrieving his auto. ~~RED~~

The Rules at bar in this case are the following which are cited here for the record.

Rule 1.13

Employee will report to and comply with instructions from supervisors who have the proper jurisdiction.

Rule 1.15

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duty, or allow others to fill their assignments without proper authority.

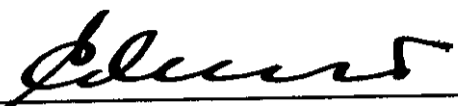
The record establishes that the Claimant was familiar with company Rules and with its policy dealing with how to handle prospective absences. Despite testimony by both the Claimant and his wife the fact remains that there was no information available for supervision relating to the Claimant's absence on the day in question. It was established that it was permissible for the Claimant's wife to have called in for him. She states at the investigation that she did so and that she left a message sometime between 7:30 and 8:00 AM. If she had done this the message would have been retrieved by the Roadmaster. No message was found. The only person who has access to the messages on the morning in question was the Roadmaster who testified at the investigation. In view of evidence available the Board has no alternative but to conclude that no call had been made. The Claimant himself could have made a call at about 4:00 AM when he arrived home from retrieving his vehicle. He states that he did not do so because he was too tired and just wanted to sleep. The Board is puzzled by this reasoning on the part of the Claimant. If he could have spent the major part of the night working on his car, as he testified, reasonable minds would conclude that it would have been responsible for him to have spent several minutes making the appropriate phone call to advise the Roadmaster that he would not be at work. Why the Claimant did not exercise this minimal effort is not explained either in the record or by the Claimant.

Upon the full record before it the Board has no alternative but to conclude that the Claimant violated the Rules at bar and that he was, in fact, absent from work without proper authority on the date of June 10, 1994. The claim cannot be sustained.

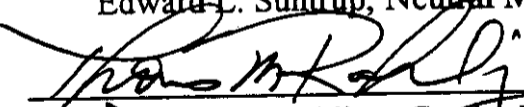
Given the Claimant's prior disciplinary record, which a Board such as this can use in framing rulings on the quantum of discipline, the Board cannot conclude that the Carrier's determination in this case was either arbitrary or capricious. The Board will, therefore, rule accordingly.

Award

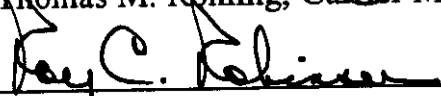
The claim is denied.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy Q. Robinson, Employee Member

Date: 10/10/01