

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY
(former Chicago & North Western Transportation Co.)**

Case No. 240

Award No. 216

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Trackman L. Herron for his alleged unauthorized Absence on October 16, 1996 was without just and sufficient cause, Excessive, capricious and in violation of the Agreement (Organization File 9KB-6279D; Carrier File 1043042D).
2. Claimant L. Herron shall now be reinstated to service with seniority and all other rights unimpaired, he shall be compensated for all wage loss suffered and his record shall be cleared of the incident.

FINDINGS:

The Claimant was employed as a trackman on a brush crew headquartered at the North Avenue Yard with a start time of 7:30 a. m. On the morning of October 16, 1996, the Claimant reported for work 10 minutes late. Subsequently, Claimant was instructed to appear for a formal investigation into the charges of his violating Rule 1.15 and to determine his responsibility, if any, for allegedly being absent without proper authority. It was determined that the Claimant was guilty as charged and based on the fact that this was Claimant's third violation of Rule 1.15 within 36 months, he was dismissed from the Carrier's service.

The Organization filed a claim on behalf of the Claimant contending that the

Claimant had attempted to contact his supervisor that morning to advise him that he may be late because of the weather, but the pay phones at which the Claimant tried to place his calls were out of order.

The parties not being able to resolve the issue, this matter comes before this Board.

This Board has reviewed the record and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being tardy on October 16, 1996. Claimant had a start time of 7:30 a.m. and it is clear from the record that he reported approximately 10 minutes late that day.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

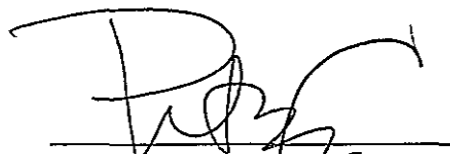
In this case, the record reveals that the Claimant has worked for the Carrier for over 16 years. This Board recognizes that this was the Claimant's third attendance violation and that under the Carrier's upgrade policy, the next disciplinary action to be taken is usually removal. However, in this case, to remove this long-term employee for showing up for work ten minutes late would constitute unreasonable and arbitrary punishment. The upgrade policy serves a purpose. However, in this case, it would lead to an excessive and unreasonable penalty.

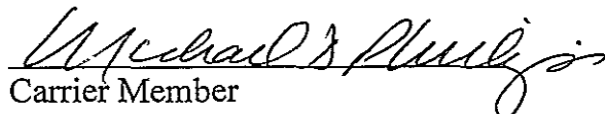
This Board is not unmindful of the importance of having railroad employees show

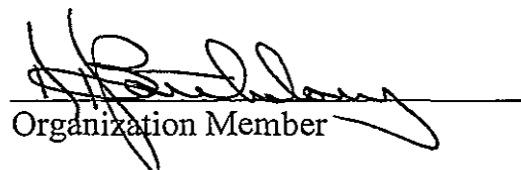
up on time. Any degree of tardiness can have a severe economic impact for the Carrier and lead to less than acceptable service. Consequently, in order to make it clear to this Claimant that he must maintain proper attendance which includes showing up for work on time, this Board will order that the Claimant will be reinstated but without backpay. The period that the Claimant was off work shall be considered a lengthy suspension. In addition, the Claimant shall be returned to work on a last chance basis. That means that if the Claimant incurs any lateness or other attendance-related violations that are not excused, he will subject himself to discharge. This way the Claimant will recognize that his job is valuable and it is also important for him to show up for work on time.

AWARD

Claim sustained in part. The Claimant is to be reinstated to service, but without backpay. The period that the Claimant was off shall be considered a lengthy suspension. He shall be returned on a last chance basis which means that he will comply with all of the attendance rules of the Carrier or face discharge.


 PETER R. MEYERS
 Neutral Member


 Carrier Member


 Organization Member

DATED: 3-10-98

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