

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13543

Docket No. 13440

00-2-99-2-36

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE:(

(Burlington Northern Santa Fe Railway Company
((former Atchison, Topeka and Santa Fe Railway Co.)

STATEMENT OF CLAIM:

“Claim of Employee:

That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly dismissed Kansas City, Kansas Machinist Adam B. Shaw (hereinafter referred to as the “Claimant”) for being absent in excess of ten days and failing to secure a formal leave of absence.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40 (i) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter be removed from his personal record.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, hired as a Machinist at the Carrier's Kansas City, KS facilities on July 10, 1997, was dismissed by written notice of termination dated October 28, 1997 stating as follows:

"Please be advised that your seniority and employment are being terminated effective October 28, 1997 due to you being absent for ten days or more without proper authority from 10-17-97 through 10-27-97.

If you desire you may request an investigation under Rule 40 of the current Agreement within 20 days of this notice."

The facts giving rise to the Claimant's discharge are not contested. The Claimant admits to being absent from duty without either requesting or receiving authority from October 17 through October 27, 1997. He further concedes that he was familiar with Rule 40 and aware of the possible consequences for failing to abide by it. The sole defense asserted at the Investigation conducted on January 16, 1998 was that he did not realize that the ten days referenced in the Rule were intended to mean ten calendar days.

Rule S-28.14, which the Claimant had received and acknowledged understanding after three days of formal orientation only three months earlier, reads in part as follows:

"Employees must not be absent from duty without proper authority. Except for scheduled vacation periods, authorized absence in excess of ten (10) calendar days must be authorized by formal leave of absence unless current agreement differs."

The Organization further argues that the Claimant failed to receive a fair and impartial Investigation in violation of Rule 40. The Board has carefully scrutinized the record evidence in this matter and finds no support for that contention. Based upon the Claimant's own testimony, the absence of substantive procedural irregularities, his short service and the record as a whole, the Board must respectfully deny the claim in its entirety.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 25th day of September, 2000.