

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36113
Docket No. MW-36246
02-3-00-3-462

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. T. S. Cordova for alleged violation of BNSF Maintenance of Way Operating Rules 1.13 and 1.15 in connection with an alleged failure to comply with instructions and report for duty on July 10, 13 and 14, 1998 was arbitrary, excessive and in violation of the Agreement (System File C-98-11/1399-0008 BNR).
- (2) As a consequence of the violations referred to in Part (1) above, Claimant E. S. Cordova shall be reinstated to service with seniority and all other rights unimpaired and compensated for wage loss suffered as a result of the arbitrary and excessive discipline imposed on September 2, 1998.”

FINDINGS:

The Third 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 has a seniority date of September 5, 1979. In 1998, he was a Group 3 Machine Operator on Rail Production Gang RP-16. Gang RP-16 was supervised by Gang Roadmaster J. P. Quinn. This mobile production gang was working on the Boise City Subdivision in 1998.

On or about March 22, 1998, the Claimant was suspended for 30 days for conduct unbecoming an employee at a Carrier lodging facility. He was also placed on probation for two years. The Claimant served his suspension from April 3 to May 3, 1998. He was on a leave of absence through the Carrier's Employee Assistance Program (EAP) from May 3 through May 27, 1998. Roadmaster Quinn had approved this leave of absence.

On July 5, 1998, the Claimant left Roadmaster Quinn a voice mail message requesting that he be allowed to take his remaining vacation then go on a leave of absence. The Claimant left Quinn a telephone number where he could be contacted. Quinn called the telephone number on July 5, 6, 7 and 8, 1998, but there was no response and there was no recording device to leave a message.

Roadmaster Quinn allowed the Claimant to use his four remaining vacation days, but declined his request for a leave of absence. It should be noted that requests for a leave of absence in excess of 15 calendar days must be made in writing to the employee's immediate supervisor. The Claimant's vacation ended on July 9, 1998.

The Claimant did not report to work on Friday, July 10, 1998, Monday, July 13 or Tuesday, July 14, 1998. He claims that he left Roadmaster Quinn a voice mail message on Sunday, July 12, 1998. However, Quinn never received a voice mail message from the Claimant on July 12, 1998.

On July 22, 1998, the Claimant wrote to the Organization explaining that personal hardships caused him to miss work. He did not request a leave of absence from work, however. This letter was forwarded to Roadmaster Quinn.

On July 14, 1998, the Claimant was notified to attend an Investigation at Amarillo, Texas, on July 22, 1998 to ascertain the facts and determine his responsibility, if any, for his alleged failure to comply with instructions and his failure to report for duty on July 10, 13 and 14, 1998, and continuing. At the Claimant's request, the

Investigation was rescheduled for August 11, 1998 at Trinidad, Colorado. As of August 11, 1998 the Claimant had not marked up for work.

On September 2, 1998 the Claimant was dismissed from service for his putative violation of Rule 1.13 and Rule 1.15 of the Maintenance of Way Operating Rules. The Organization appealed the Claimant's discharge arguing that instead of being terminated the Claimant should have been medically disqualified because he was physically and emotionally unable to return to work. The appeal was progressed to the Board.

It is undisputed that the Claimant made no attempt to mark up for work after his vacation ended on July 9, 1998. Moreover, the Claimant acknowledged that the Carrier had not given him a leave of absence. In fact, the Claimant never made a written request for a leave of absence with his immediate supervisor. He was familiar with the procedure for requesting a leave of absence because he had been granted a leave of absence in May 1998, two months earlier.

The Claimant stated that he left a message on Roadmaster Quinn's voice mail on July 12, 1998. However, Quinn never received a message from the Claimant anytime after July 5, 1998. The Claimant suggested that the Roadmaster's voice mail may have malfunctioned, but there is no evidence to support this conjecture. In any event, by his own admission, the Claimant made no attempt to contact Roadmaster Quinn anytime after July 12, 1998.

There is no question that the Claimant was not authorized to be absent from work after July 9, 1998. He did not report for duty from July 10 through August 11, 1998, a period of one month. There was no justification for this protracted absence. As noted above, the Claimant never made a written request for a leave of absence and never contacted Roadmaster Quinn after July 5, 1998 to discuss his absence from Gang RP-16. This constituted a clear violation of Maintenance of Way Operating Rule 1.15.

The Claimant's unexcused absence from Gang RP-16 for one month was a serious offense. It was his second serious offense in a span of four months. Therefore, under the Carrier's Policy for Employee Performance Accountability, he was subject to dismissal. The Carrier had just cause to terminate the Claimant's employment for his failure to report for work for approximately one month without authority despite his considerable length of service. His claim is denied as a result.

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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 Third Division**

Dated at Chicago, Illinois, this 22nd day of July 2002.