

PUBLIC LAW BOARD NO. 4244

Award No. 237

Case No. 244

Carrier File No. MWE981106AD

Organization File No. 240-13A1-9847.CLM

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on October 14, 1998, the Carrier dismissed Mr. N. R. Kee for alleged violation of Rule 1.15, Duty- - Reporting or Absence, of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged being absent without authority on September 1, 2, 3, 4, 7, and 8, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

During the dates at issue in this case, the claimant was scheduled by the Carrier to work as a laborer on assignment PEB RP09 at Horse Creek, Wyoming. The claimant was scheduled to report for duty at Horse Creek at 7:00 a.m. on September 1, 1998.

Subsequently, the claimant failed to report for duty as scheduled on September 1, 2, 3, 4 and 8, 1998.

The claimant was notified by the Carrier to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged failure to report for duty at the designated time and place on September 1, 2, 3, 4, 7 and 8, 1998, while assigned as a laborer on PEB RP09. As a result of the formal investigation

conducted on September 16, 1998, the Carrier dismissed the claimant from service for violating Rule 1.15 of the Maintenance of Way Operating Rules (MWOR). The Board finds that the Carrier has satisfied its burden of proof in this case for the following reasons.

The following rule is applicable to the Board's decision in this case. Rule 1.15 of the MWOR, entitled "Duty- Reporting or Absence," provides, as follows: "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 duties, or allow others to fill their assignment without proper authority."

The evidence of record reveals that the claimant did not report for duty as scheduled, and the claimant did not request permission to lay off on these dates. As discussed in this Board's Award No. 236, the claimant notified the Carrier on August 23, 1998, that he was unable to report for duty as scheduled the next day. While the claimant testified that he was unable to report for duty because of a lack of sufficient funds due to an error by the Carrier in the calculation of his last paycheck, the record reveals that the Carrier corrected the problem and the claimant received a paycheck for the proper amount on September 5, 1998. At this point in time, the Board finds that the claimant should have reported for duty as scheduled on the next work day, which was September 8, 1998. The claimant not only failed to report, but he failed to call the proper Carrier official at any point subsequent to August 23, 1998, and seek permission to remain off work.

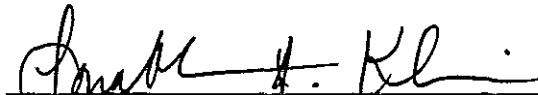
The Board finds that the claimant failed to report for duty at the designated time and place. The Carrier has satisfied its burden of proof that the claimant violated Rule 1.15 of the MWOR. Moreover, the claimant has a history of prior discipline for AWOL, including a level 1 deferred suspension on July 7, 1997, a level 2 deferred suspension on May 27, 1998, a level 2 suspension on May 27, 1998, a level 2 suspension on July 27, 1998, and the suspension addressed in Award No. 236 of this Board. The claimant has clearly demonstrated an inability to report for duty which is required in order to retain his employment by the Carrier. The claim is denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 8th day of May, 1999.