

**PUBLIC LAW BOARD NO. 4244**

**Award No. 245**

**Case No. 254**

**Carrier File No. 1499-0123**

**Organization File No. 90-1311-9916.CLM**

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**Parties to Dispute:**

**-and-**

# BURLINGTON NORTHERN SANTA FE RAILWAY

**Statement of Claim:**

1. The Carrier violated the Agreement when on July 1, 1999, the Carrier issued a Level 1, Formal Reprimand to Mr. J. W. Rhodes for alleged violation of Rule 1.15 of the Maintenance of Way Operating Rules, effective January 31, 1999, in connection with being absent from duty without permission on May 24, 1999.
2. As a consequence of the Carrier's violation referred to above, Claimant shall have the discipline expunged from his record and all other rights unimpaired and compensated for all wage loss and/or otherwise made whole beginning June 7, 1999, continuing forward.

### **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**

The claimant, J. W. Rhodes, operated the edging machine on assignment TP 17. On May 24, 1999, the claimant failed to report for duty as scheduled. Subsequently, the claimant reported for duty on the following date. At this time, the claimant informed assistant roadmaster G. W. Bounous that he did not have his telephone number. Therefore, the claimant maintained he could not notify assistant roadmaster Bounous that he would be unable to report for duty on May 24, 1999.

The Carrier instructed the claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his absence from duty without permission. As a result of the formal investigation conducted on June 7,

1999, the Carrier issued the claimant a Level 1- formal reprimand for violating Rule 1.15 of the Maintenance of Way Operating Rules (MWOR). Additionally, the Carrier placed the claimant on probation for a period of one year. For the following reasons, the Board finds that the Carrier has satisfied its burden of proof that the claimant violated Rule 1.15 of the MWOR.

At the investigation, the claimant testified that he was unable to report for duty on May 24, 1999, due to an illness. The claimant further testified that he was unable to inform assistant roadmaster Bounous that he was ill because he did not have Bounous' telephone number. However, the record indicates that the claimant failed to contact foreman L. Taylor, Jr., or any other Carrier official, in order to inform them of his situation.

Assistant roadmaster Bounous testified at the investigation that he informed each employee under his supervision to notify either himself or foreman Taylor regarding absences. Bounous further stated that he announced his telephone number during a meeting which was attended by every employee in the claimant's gang, including the claimant. Foreman Taylor also testified that assistant roadmaster Bounous announced his telephone number during this meeting. Based upon these facts and circumstances, the Board concludes that it was the claimant's responsibility to obtain the appropriate and necessary telephone numbers either during or after the meeting conducted by assistant roadmaster Bounous. The claimant knew or should have known the telephone number to contact assistant roadmaster Bounous.

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 record reveals that the claimant failed to report for duty on May 24, 1999. Additionally, the claimant did not have permission to call off on this date. Further, the record indicates that the claimant did not attempt to contact the Carrier regarding his absence, and as previously noted, the claimant should have known the telephone numbers of the appropriate Carrier officials. Therefore, the Board concludes that the claimant violated Rule 1.15 of the MWOR.

The Carrier's Policy for Employee Performance Accountability provides, in part, as follows:

Level 1- First offense within 3 years- formal letter of reprimand

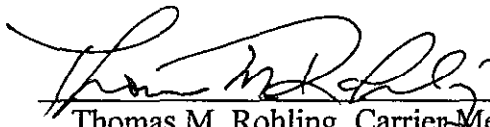
The recipient must respond by developing with management a joint written solution to correct behavior giving rise to the letter. For an employee's first rule violation, the normal three-year probationary period may be reduced to one year at supervisor discretion.

Based upon the claimant's personal record, the Board finds that a formal reprimand by the Carrier was the appropriate discipline for the claimant's rule violation. For each of the aforementioned reasons, the claim must be denied.

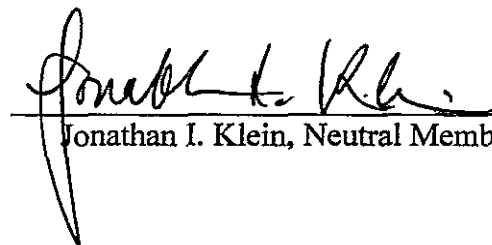
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**AWARD**

The claim is denied.

  
Thomas M. Rohling, Carrier Member

  
R. B. Wehrli, Employee Member

  
Jonathan I. Klein, Neutral Member

This Award issued the 27<sup>th</sup> day of December, 1999.