

**PUBLIC LAW BOARD NO. 4244**

**Award No. 247**

**Case No. 256**

**Carrier File No. 1499-0112**

**Organization File No. 190-13A1-9913.CLM**

**Parties to Dispute:**

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**BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES**

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**BURLINGTON NORTHERN SANTA FE RAILWAY**

**Statement of Claim:**

1. The Carrier violated the Agreement when on June 21, 1999, the Carrier issued a dismissal to Mr. M. V. Furtado for the alleged violation of Letter of Understanding dated July 13, 1976, in connection with being absent without proper authority for more than five (5) consecutive work days beginning April 17, 1999, and continuing forward.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing April 17, 1999, and continuing forward and/or otherwise made whole.

### **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, M. V. Furtado, failed to report for duty beginning on April 17, 1999, and continuing forward. As a result, the Carrier notified the claimant that his employment was terminated pursuant to the provisions set forth in the Letter of Understanding dated July 13, 1976, for being absent without proper authority for more than five (5) consecutive work days. Subsequently, the claimant disputed the charges by the Carrier, and requested that an investigation be held regarding this matter.

The Carrier notified the claimant to attend an investigation on June 4, 1999. As a result of this investigation, the Carrier dismissed the claimant from service for violating the Letter of

Public Law Board No. 4244  
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Case No. 256  
Carrier File No. 1499-0112  
Organization File No. 190-13A1-9913.CLM

Understanding dated July 13, 1976. For the following reasons, the Board finds that the discipline assessed the claimant by the Carrier must be sustained.

The Letter of Understanding dated July 13, 1976, provides as follows:

In connection with the application of (Rule 13) of the current Agreement, this will confirm our understanding reached in conference today that, effective October 1, 1976, to terminate the employment of an employee who is absent from duty without authority, the Company shall address such employee in writing at his last known address, by Registered or Certified Mail, return receipt requested, with copy to the General Chairman, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may, within 20 days of the date of such notice, if he so desires, request that he be given investigation under (Rule 13) of the current Agreement.

Note: Effective January 1, 1984, the above understanding is to be applied only in cases where the employee is absent from duty without authority more than five (5) consecutive work days.

The record reveals that the claimant was issued a thirty-day suspension by the Carrier beginning on February 16, 1999, through March 17, 1999. The record further indicates that the claimant was issued another thirty-day suspension by the Carrier beginning on March 18, 1999, through April 16, 1999. At the investigation, the claimant testified that he contacted the Carrier soon after he received notification of his first suspension, which was dated March 11, 1999. Lynda McKenzie, a manpower planner, informed the claimant that the Carrier would be issuing him another notice of suspension as the result of a second investigation conducted on

March 11, 1999. However, McKenzie did not know when the Carrier would issue this notification. The claimant stated that he subsequently telephoned the Organization in early April 1999. The Organization informed the claimant that it had not yet received notification of his second suspension by the Carrier. According to the claimant, three weeks in April passed and he had still not been notified by the Carrier regarding his second suspension. Nevertheless, the claimant did not call the Carrier or any of its officers regarding his second suspension.

The claimant testified that the Carrier began calling his residence toward the end of April 1999. On April 28, 1999, the claimant received a notice of dismissal from the Carrier for being absent without proper authority for more than five consecutive work days. According to the claimant, this was the first notification that he received from the Carrier since the notice of his first suspension, dated March 11, 1999. The claimant contends that he did not receive notification of the second, thirty-day suspension from the Carrier.

The record indicates that the Carrier issued the claimant notification of his second thirty-day suspension on April 6, 1999. This notification was sent via certified mail to the claimant's correct address, and the return receipt was signed by an individual on April 9, 1999. The notification of the claimant's second, thirty-day suspension provides that the claimant should contact the Carrier's manpower office regarding his reinstatement on April 17, 1999. However, the claimant did not contact the Carrier until April 30, 1999. Therefore, the record is

Public Law Board No. 4244  
Award No. 247  
Case No. 256  
Carrier File No. 1499-0112  
Organization File No. 190-13A1-9913.CLM

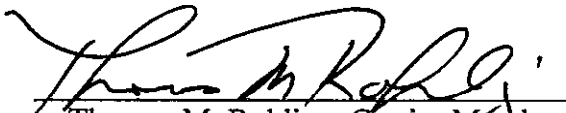
clear that the claimant did not report for duty as scheduled, nor did he request permission to be absent from duty beginning on April 17, 1999.

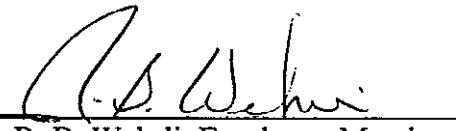
Based upon these facts and circumstances, the Board finds that the Carrier satisfied its obligation of notifying the claimant regarding his second thirty-day suspension. The Carrier sent this notification via certified mail to the correct address which was provided by the claimant. The Board further finds that the claimant had knowledge that the Carrier was in the process of issuing him a second notification of suspension when he had his telephone conversation with the Carrier's manpower office in March 1999. Thus, the claimant should have been aware of the approaching date of his reinstatement by the Carrier, and at the very least have contacted the Carrier long before April 30. Instead, the claimant decided to sit idly by "waiting," and even left town for periods of time in April, including a one-week period. Even after telephone messages were left at his residence toward the end of the third week of April to call work, the claimant waited another week to contact the Carrier. For these reasons, the Board concludes that the Carrier properly discharged the grievant in accordance with the Letter of Understanding dated July 13, 1976, on the grounds that the grievant was absent from duty without authority for more than five consecutive work days. For each of these reasons, the claim must be denied.


### **AWARD**

The claim is denied.

Public Law Board No. 4244  
Award No. 247  
Case No. 256  
Carrier File No. 1499-0112  
Organization File No. 190-13A1-9913.CLM

  
Thomas M. Rohling, Carrier Member

  
R. B. Wehrli, Employee Member

  
Jonathan I. Klein, Neutral Member

This Award issued the 9<sup>th</sup> day of June, 1999.