

PUBLIC LAW BOARD NO. 4244

**Award No. 249
Case No. 252
140-1311-997.EXP**

Parties to Dispute:

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**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

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BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to issue a Level 2 Deferred Suspension for 10 days from service with a probationary period of one year was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 10:00 a.m. on August 13, 1999 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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, foreman Juan P. Aguilar, was assigned by the Carrier to the position of project foreman for gang number 23951. Subsequent to the commencement of his assignment, the claimant received verbal and written instructions from the Carrier regarding his various job duties and responsibilities. However, the Carrier contends that the claimant failed to comply with these instructions on various dates between July 13 and 30, 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 alleged failure to comply with verbal and written instructions between July 13 and 30, 1999. As a result of the formal investigation conducted on August 13, 1999, the Carrier issued the claimant a ten-day Level 2 deferred suspension for violating Rule 1.13 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 1.13 of the MWOR.

A memorandum issued to the claimant by the Carrier, and signed by the claimant on July 13, 1999, provides, in part, as follows:

* * *

I have talked with you on several occasions about reporting requirements and responsibilities of this position. Last set of verbal instructions were given on 7/12/1999 and not met on the same day. You failed to contact me on my cell phone at the end of duty 7/12/1999, for a job debriefing. In order to aid you in your duties a cell phone has been provided. The following are my instructions and will be done daily:

1. Report to duty on time,
2. Call me on my cell phone before 0800 for morning job briefing,
3. Call me on my cell phone at the end of your work day for a debriefing (covering hours worked, overtime for your gang and days accomplishments),
4. Keep a written log of all the days activities,
5. Contact me immediately if any problems on site or with the gang,
6. Maintenance of assigned vehicle and equipment.

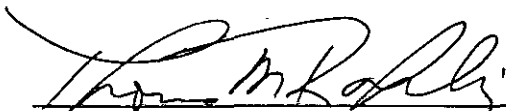
At the investigation, assistant roadmaster H. J. Stopplecamp testified that the claimant failed to call him at the end of his work day for a debriefing on July 26 and 30, 1999. Assistant roadmaster Stopplecamp also testified that the claimant telephoned him more than two hours

after the completion of his work day on July 27, 1999. Additionally, Stopplecamp stated that the claimant failed to telephone him by 8:00 a.m. on July 28, 1999, for a morning job briefing.


Rule 1.13 of the MWOR entitled "Reporting and Complying with Instructions," provides as follows: "Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties." At the investigation, the claimant admitted that he failed to comply with Rule 1.13 of the MWOR. Based upon the claimant's admission and the evidence of record, the Board finds that the claimant violated Rule 1.13 of the MWOR when he failed to comply with verbal and written instructions issued to him by assistant roadmaster Stopplecamp. Accordingly, the claim must be 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 4th day of February, 2000.