

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- “1. The Carrier violated the Agreement when on August 5, 2002, Mr. J. P. Long was dismissed from service for allegedly violating Rule 1.15 of the Maintenance of Way Operating Rules in conjunction with being absent without proper authority of more than five (5) consecutive work days.
- “2. As a consequence of the Carrier’s violation referred to in part (1) above, Mr. Long shall be reinstated with seniority, vacation, all rights unimpaired and paid for all wages lost in accordance with the Agreement.” [Carrier File No. 14-02-0252. Organization File No. 170-13A1-0220.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees (“Parties”) herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Jim P. Long, was hired by the Carrier on March 1, 1999. He was employed as a Trackman in the Carrier’s Maintenance of Way Department. According to the record in this case, he last worked on August 2, 2002, and thereafter never again reported at his assigned work place. After five consecutive days of absence, he was notified by Certified Mail, Return Receipt Requested, on August 13, 2002, that his seniority and employment with the Carrier were terminated for being absent without proper authority for more than five consecutive days. Termination in such cases is provided for in a Letter of Understanding between the Parties to the Agreement, dated July 13, 1976, generally referred to as Appendix No. 11:

“In connection with application of (Rule 13) [the Discipline Rule] 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 an 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.”

By means of a handwritten letter dated August 30, 2002, the Claimant wrote the Carrier:

“My name is Jim P. Long and I have been absent for 5 consecutive day [sic] because of a serious injury. The letter that I am writing is for the request of an investigation per Rule 13. I would surely like to get back to work ASAP.”

Pursuant to the Claimant’s request, an investigation was set for September 16, 2002. He was charged with possible violation of Maintenance of Way Operating Rule (MWOR) 1.15, which reads 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.”

By request of the Organization’s General Chairman, the investigation was postponed until, and held on, September 16, 2002. When it was convened, the Claimant was not present. Certified Mail receipts were offered in evidence, apparently signed by the Claimant, acknowledging receipt of the original notice of investigation and the notice of its postponement. The Organization’s Vice General Chairman was present for the purpose of representing the Claimant, and he attempted, without success, to contact the Claimant at two different telephone numbers in his possession. Nor could the Claimant be found on the Carrier’s property at that time. The investigation began about one hour late, when the Claimant had still not appeared.

Division Engineer M. R. Bader was the Carrier’s sole witness. He testified that the Claimant did not come to work on August 5, 2002, and had not contacted either his Foreman or his Roadmaster to explain his absence. Mr. Bader also testified that he had counseled with the Claimant on July 22, 2002, when he had again been absent for five consecutive days, and said he had gone over the procedures for absenting oneself with the Claimant. Mr. Bader further stated that he had made the Claimant aware of the Carrier’s Employee Assistance Program, in the event that some personal issues were affecting his ability to come to work. He added that the Claimant had not been absent again until August 5.

On cross examination, Mr. Bader was asked whether he had had any contact with the Claimant, other than their exchanges of correspondence, noted above. He said he had received a voice mail message from the Claimant on August 20. Mr. Bader called back, he said, several times on August 20 and 21, but no one answered the number left for him. He was not aware of any injury, other than that alluded to in the Claimant's August 30 letter.

The Claimant's representative made the following closing statement in the record:

"Mr. Chairman, I'm pretty hard pressed as Mr. Long's not contacted us. Nor has he contacted the Carrier. I can't really say why he is not here today, and I can't say why he was AWOL in the past. If, in fact, he was involved in some kind of major accident, or something, and might be hospitalized, maybe we can work something out at a later time. But as of right now, I have no further information."

At that point the investigation was closed.

On October 18, 2002, the Carrier advised the Claimant that he was dismissed from its employment for violation of MWOR 1.15, being absent without proper authority for more than five consecutive work days beginning August 5, 2002.

The Organization promptly appealed the Carrier's decision to its Assistant Director - Labor Relations. It argued that the discipline was harsh, extreme, and in abuse of discretion. The Organization further argued that the Carrier failed to produce evidence to support its charges, and even if it had, the discipline was excessive in proportion to the alleged charges.

The Carrier responds that the Claimant failed to appear at the investigation at his own risk. The Carrier states that it developed substantial evidence to support the charge; the Claimant abandoned his job and made no reasonable effort to come to work. He had been counseled at the time of a previous period of absence, and even offered assistance through the Carrier's Employee Assistance Program in the event he was having personal difficulties.

The Carrier further notes that Appendix No. 11 permits dismissal in the case of an unexcused absence for more than five consecutive days. Under these circumstances, the discipline is neither harsh nor excessive.

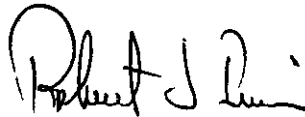
The Board has carefully studied the record in this case and considered the arguments of the Parties. Aside from the bare statement in his request for an investigation, the Claimant has offered no mitigation, extenuation, nor excuse for his extended absence. While the Board cannot rule out the possibility that a prolonged hospitalization might have eventuated in the Claimant's failure to come to work or even attend his investigation, it is most unlikely that he would have been prevented from contacting his representative for the purpose of preparing a defense, or even

seeking a postponement of the investigation. The Organization's appeal letter was dated November 12, 2002 – some 100 days after the commencement of the Claimant's absence. The Carrier denied the appeal on January 7, 2003 – more than five months after his absence began. Yet, it appears that neither the Organization nor the Carrier had been made aware of any new information about the Claimant's absence, even after the passage of so many days.

The Board concurs with the Carrier's view that the Claimant effectively abandoned his employment. In cases such as this, and as provided in Appendix No. 11, dismissal is almost automatic, subject to the findings of an investigation. The Board can find no reasonable basis to overturn the Carrier's decision in this case and under these circumstances.

AWARD

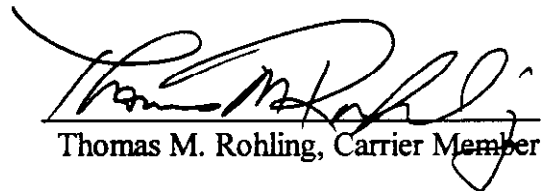
The claim is denied.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



Thomas M. Rohling, Carrier Member

June 13, 2003

Date