

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 12, 2002, Mr. S. B. Burr was issued a Level S, 30-day record suspension with a three year probationary period<sup>1</sup> for violation of Rule 1.13 (Reporting and Complying with Instructions) in conjunction with his alleged failure to return to work following a leave of absence and failure to request an extension to a leave of absence.
2. As a consequence of the Carrier's violation referred to above Mr. Burr shall have his record expunged of the above referenced discipline. [Carrier File No. 14-02-0178. Organization File No. 10-1311-023.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. Samuel B. Burr, entered the Carrier's employment in 1979. He suffered an off-duty injury in a vehicle accident on May 26, 2001. He returned to work thereafter as a *Trackman/Machine Operator*, but the nature of his duties, he said, aggravated his injuries, described as ruptured spinal disks. As the consequence, he did not work after July 11, 2001. He applied for and was granted a medical leave of absence until October 28, 2001. He applied for an extension of leave on October 31, 2001, and it was extended until December 7, 2001, and further extended until January 31, 2002.

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<sup>1</sup>There is nothing in the record to substantiate the assignment of a three-year probationary period as a part of this disciplinary assessment. The Board concludes this is a typographical error.

On the basis of his personal physician's written certification that he would not be able to work before June 6, 2002, the Organization applied to the Carrier's Manpower Planning Office for an extension until that date, which was granted.

On March 12, 2002, the Carrier's Division Engineer notified the Claimant that the Manpower Planning Office did not have the authority to grant his leave of absence. This notification, however, did not rescind the leave, but instructed the Claimant that future requests must be directed through the Division Engineer's office.

The Claimant submitted to the Division Engineer, on the Carrier's prescribed form, dated June 6, 2002, a request for an extension from June 6, 2002, until December 31, 2002. It was accompanied by a doctor's statement dated June 18, 2002. That statement does not appear in the record. The Division Engineer replied by letter on June 21, 2002, advising that the form had not been received until June 18, 2002. The Claimant's request for an extension was declined, pending receipt of the following information:

We need to know when and in what capacity you will be able to return to work so we can meet our manpower planning responsibilities. This entails developing an individualized return-to-work plan, which can only be responsibly accomplished by knowing specifically what your treatment plan and physical/functional capabilities are, as well as specific restrictions and pertinent time factors for anticipated work ability status changes.

The letter went on to ask that this information be supplied by July 3, 2002, accompanied by a doctor's statement and a new leave of absence request form.

In the meantime, however, the Division Engineer had issued a notice of investigation to the Claimant, on June 14, 2002, in connection with his alleged failure to mark up for duty after the expiration of his leave of absence on June 6, 2002, and his alleged failure to request an extension. At the request of the Organization, the investigation was twice postponed, and held on July 17, 2002.

On June 27, 2002, pursuant to the Division Engineer's June 21 letter, the Claimant submitted another request for extension of his leave of absence. It was accompanied by a letter from his physician, also dated June 27, 2002, reading as follows:

Mr. Burr has been a patient of mine for a significant period of time and had been released back to work with limitations when he was in Mitchell, South Dakota, recently. Apparently Mr. Burr was at Mitchell on June 24, 2001 to July 11, 2001, and he had significant restrictions at that time, which were completely ignored by the supervisors on the job and when Mr. Burr brought the facts to the attention of

the supervisors they were wanting him to resign. Mr. Burr elects not to go through that again. He is scheduled to have surgical intervention with back injections in both the lumbar area disks and the cervical disks by Dr. \_\_\_\_\_ out of Springfield on July 18, 2002.

As far as the record shows, the Claimant's leave of absence was never formally extended after its expiration on June 6, 2002.

The investigation referred to above was held on July 17, 2002. The Claimant was capably represented by the Organization's Assistant General Chairman. A transcript of testimony and evidence taken therein is before the Board. The facts described above were drawn from the transcript.

The Board finds that there are several rules, directives, and/or regulations governing employee conduct and extended leaves of absence.

Schedule Agreement Rule 15.E. (in part)

An employee failing to report for duty on or before the expiration of their leave of absence will forfeit all seniority rights, unless an extension is obtained.

Instructions on Leave of Absence Request Form

Failure to report for duty on or before the date of expiration of leave of absence, unless application for extension has been approved, will be considered sufficient cause for dismissal.

An employee absent for medical reasons, sickness or injury, must provide a doctor's statement along with this form indicating duration for absence. Medical leaves in excess of 30 calendar days may require additional medical forms.

Extension Required - For medical reasons - must provide another doctor's statement indicating duration of absence along with this form.

Maintenance of Way Operating Rule 1.13

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.

In the record, the Claimant tacitly admitted that he did not report for work nor request an extension of his leave before the date of its expiration. He attributed this failure on his part to the medications he was taking. He further attributed the difficulty he experienced in obtaining the additional medical evidence sought by the Carrier to the murder of one of his doctors, and the divorce proceedings in which another was engaged.

The Division Engineer, on August 12, 2002, advised the Claimant he was issued a Level S 30-day Record Suspension for violation of Maintenance of Way Operating Rule 1.13, when he failed to mark up for duty on June 6, 2002, and failed to request an extension of his leave of absence. That decision was promptly appealed by the Organization's General Chairman, and his appeal declined by the Carrier's Labor Relations Department. The dispute is now before this Board for adjudication.

The Organization argues that the Claimant was uncertain of the procedure for filing request for an extension of his leave of absence, not having been given the proper instructions, because he was a former Santa Fe employee working under the BN Northern Lines Agreement. But even if the charge were proven, it further argues, the discipline is "extreme, unwarranted and unjustified."

The Carrier responds with a blanket rejection and denial of all the Organization's objections and arguments. It further rejoins that the evidence shows the Claimant did fail to follow instructions, and a 30-day record suspension is neither harsh nor excessive.

The Board has studied the record and considered the arguments submitted by the Parties. The Board is not persuaded that the Claimant did not know the procedures involved in obtaining a leave of absence or its extension. First, he had already demonstrated that he knew how to execute the forms, since he had obtained extensions before. Second, examination of the Carrier's instructions indicate that the requirements for BN Northern Lines employees are not all that different from those required of former Santa Fe employees. In any event, he could have applied to a Carrier officer for advice if he was uncertain of what is required.

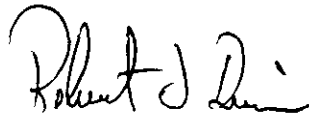
The Board notices a comment in the record, uttered by the Carrier's sole witness, Roadmaster John Bainter. He said, "[W]e have a clerk who then monitors each employee who's on a leave of absence, and she'll send a, a request out to see if he wish to fill [file?] an extension." The record does not indicate that any such request was sent the Claimant in this case. Had it been done, he might have acted to initiate his extension application in a more timely manner.

It is undisputed that the Claimant failed to report for duty on or before his leave of absence expired. The Carrier nonetheless did not immediately cause forfeiture of his seniority rights, but notified him of his obligation to provide the medical data necessary to support his continued disability. Without regard to another pending case before this Board involving the

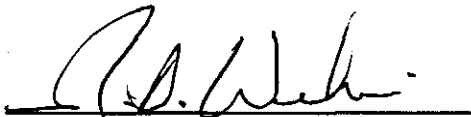
same Claimant, the Board is persuaded that even the mild disciplinary assessment of a 30-day record suspension is excessive for the relative marginality of his offense. The Board is not indifferent to the extra trouble this Claimant has caused to the efficiency of the Carrier's manpower needs, nor the necessity to promptly dispose of his request for an extension, supported by the required records. His conduct, at worst, seems better characterized as listless or lackadaisical. But this offense does not rise to the level of insubordination contemplated by Maintenance of Way Operating Rule 1.13, or wilful refusal to provide the required documentation of his physical condition. His efforts to do so have met with little or no cooperation from his doctors, who seem to have their own problems. The Board believes the nature of his offense, the first in more than ten years, does not warrant the disciplinary penalty assessed.

AWARD

The claim is sustained.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



Thomas M. Rohling, Carrier Member

William L. Yeck  
as of August 21, 2003

September 4, 2003

Date