PUBLIC LAW BOARD NO 5850

Award No.
Case No. 111

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on June 16, 1998, the Carrier issued a Dismissal to Mr. T.J. Gibbons for the alleged violation of Rules S-21.1, S-28.6, S-28.14 and S-28.18 of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997, in connection with his alleged being absent without proper authority on May 21 and 22, 1998. The dismissal was also in connection with Mr. T.J. Gibbons alleged failure to wear personal protective equipment and being insubordinate by refusing to return Carrier property on May 27, 1998.

2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On June 3, 1998, the Carrier wrote Claimant setting up an investigation in:

"...connection with your allegedly being absent from work without proper authority and being insubordinate by failing to report for duty on May 21 and May 22, 1998 as instructed; allegedly not wearing personal protective equipment as required on May 27, 1998; and allegedly refusing to turn over railroad property to Roadmaster...on May 27, 1998 as instructed, possible violation of Rules S-21.1, S-28.6, S-28.14 and S-28.18 of Safety Rules and General Responsibilities for All Employees, effective March 1, 1997...."

Claimant had just qualified for a ten day paid vacation in the year 1998. In accordance with an understanding reached with the Organization, an employee may keep five days vacation as "floating" days, but it is with the further understanding a floating day can be taken only with the permission of the employee's Supervisor.

Such an understanding is clearly placed within the heading of the vacation list. It reads:

> "Requests to take floating vacation days for those who elected to float a week, should be directed to your immediate supervisor for approval."

Claimant, having minimum seniority, knew he wanted May 21 & 22, 1998, as two of his five floaters, but he did not know until May 14, 1998, whom his Supervisor would be. As soon as Claimant became aware of where he would be working, he advised the Roadmaster of his intent to be on vacation these two days. His e-mail to the Roadmaster reads as follows:

> "...right know (sic) it appears that I will be working in your territory May 18-22-1998. This letter is to give you as much advance notice, that on May 21 @ 22 1998 I plan to be on vacation. Sorry about the short notice, but this is the earliest I had any idea where I would be working...."

The Roadmaster responded via e-mail to Claimant's e-mail stating:

> "If it is scheduled, then take it, if it is not then you need to be here at (sic) scheduled. As a reminder, you have not secured permission to be off and at this time I am not granting your request...."

From the aforequoted e-mail exchange, it is clear to this Board that Claimant did not seek the approval of the Roadmaster to be off May 21, 22, but rather, he was advising the Roadmaster "that on May 21 @ 22 1998 I plan to be on vacation."

Claimant has ignored the last sentence of the Roadmaster's response to his e-mail advice of being off May 21, 22, 1998, as vacation days and in lieu zeroed in on the first portion which read, "If it is scheduled, then take it."

Claimant then called manpower planning for the Arizona Division inquiring if the two days had been scheduled, and he was advised that manpower does not schedule floating vacation days.

The Roadmaster, aware of Claimant's displacement and also aware of service requirement's for the week of May 18-22, 1998, held the Foreman displaced by Claimant at Yucca to assist in the work that had to be done.

Claimant then secured a printout of the work force at Yucca, and found that the Junior Foreman was listed as a Relief Foreman with the relief computer code of 08.

Once Claimant had a printout listing the Foreman he displaced as a Relief Foreman, he then argued at the investigation that he had the Roadmaster's permission for the floating vacation days.

This Board rejects this argument. It is clear that floating vacation days are not scheduled in advance as are 5 to 25 days vacation, and floating vacation days can be taken only with the permission of the Supervisor.

Claimant was off on his two day vacation without the permission of his Supervisor. It appears from the transcript that if Claimant simply had approached the Roadmaster, he just may have had permission to be off, but he did not ask.

Claimant was paid for the 21st and 22nd as he enters his own time in the computer. The only correction made on the payroll for Claimant was to change the code reflecting floating vacation days as opposed to scheduled vacation days.

Claimant returned to work on May 26, and did have a rather emotional or heated discussion with the Roadmaster about his taking off without permission, but in Claimant's mind, at the conclusion of the talk, he believed the vacation issue was settled.

On May 27 at about noon, the Roadmaster passed Claimant leaving the work area for lunch and motioned him to return to the work area. Claimant left his truck without wearing his hard hat even though it was a required mode of dress in the work area.

The Roadmaster was disappointed with Claimant's work performance on May 26, and so advised Claimant, ending the discussion by suspending Claimant from service and requested Claimant at that point to turn in all the company property in his possession. Claimant refused to turn in the company equipment.

This, the Board admits, was an unusual request, but nevertheless, it was a request from his Supervisor and as long as such an order did not in any way jeopardize the safety and welfare of Claimant or others, Claimant's only choice was to comply and if he believed it to be an unjust or improper order, to protest later. In other words, the well-established axiom of "obey now, grieve later" is the course Claimant should have followed.

In view of the transcript, the Carrier has furnished sufficient evidence of Claimant's culpability for the charges assessed. The only matter to be determined is the discipline. Claimant hired out April 22, 1996. From October 20, 1997, until March 19, 1998, he was suspended without pay for dishonesty and, in this instance, he was suspended from service at noon on May 27, 1998, with the suspension being converted to a dismissal following the investigation. Two very serious charges from a relative new-comer. Under these circumstances, the discipline will be upheld.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: 6/29/99