

PARTIES TO DISPUTE:  
(Brotherhood of Maintenance of Way Employees  
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on November 10, 1998, the Carrier issued a Dismissal to Mr. M.A. Tsosie for the alleged violation of Rule 1.5 of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997, in connection with being absent without proper authority for more than five (5) consecutive work days beginning September 1, 2, 3, 4, 8 and 9, 1998, and continuing forward.
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.

Pursuant to the provisions of a Letter of Understanding dated July 13, 1976, an employee off without proper authority in excess of five consecutive work days will be terminated.

Claimant was advised on September 11, 1998, that his seniority and employment with the Carrier were terminated for being off without proper authority on September 1, 2, 3, 4, 8 and 9, 1998.

The Letter of Understanding also provides that if the recipient of such a letter disputes the termination, he can request a hearing if he does so within 20 days of the date of such letter.

Claimant timely requested an investigation. Upon receipt of Claimant's request for an investigation, the Carrier wrote Claimant setting the time and date of the investigation and

added the charge of being on company property on September 2, 1998, while under the influence of alcohol.

Following the investigation, the Carrier reaffirmed its termination of Claimant's seniority and employment rights for being absent without authority on September 1, 2, 3, 4, 8 and 9, 1998. Carrier also advised the termination included the fact he was on company property under the influence of alcohol.

Insofar as this Board's review of the case is concerned, it will confirm that the Carrier's termination of Claimant's seniority and employment rights were as provided for in the July 13, 1976 Letter of Understanding.

Claimant requested the investigation, and it was his burden to establish that he was off with proper authority. This he failed to do. At no time on September 1, 2, 3, 4, 8 or 9 did Claimant contact anyone in authority to receive permission to be off.

With the facts clearly evidenced in the investigation, the Board finds it unnecessary to rule on the alleged alcohol related incident that occurred on September 2, 1998.

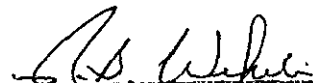
AWARD

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  
Dated: November 9, 1999

  
Thomas M. Rohling, Carrier Member