

PUBLIC LAW BOARD NO. 5550

Award No. 165
Case No. 165

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on November 11, 1999, Mr. R. P. Edwards was assessed a Level-2 deferred suspension of 20 days for his alleged violation of Engineering Instruction 22.5 and Rules 1.15 and 1.13 of the Maintenance of Way Operating Rules Effective January 31, 1999 as revised in conjunction with his alleged absence from duty without authority on October 13, 14 and 15, 1999.

2. As a consequence of the Carrier's violation referred to above, the Claimants shall have the Level-2 deferred suspension of 20 days 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.

This is a companion case to Case 164. Claimant did not report for work on October 13, nor October 14, nor October 15, 1999, nor did he have authority to be off. Under the circumstances, the Carrier set an investigation for October 26, 1999. A carbon copy of the notice was furnished the Local Representative who signed for his copy.

Claimant exercised his right not to attend the investigation. Accordingly, Carrier's

evidence presented at the investigation stood unchallenged.

Claimant was assessed a 20 day deferred suspension.

In the post-investigation claim handling, the Organization contends Claimant was not assigned to the vacancy at Macomb, thus he could not have been absent in as much as he had never been assigned.

This perhaps would have had a bearing on Claimant's guilt or innocence had it been raised during the investigation, but in the post-investigation exchange it is too late. Surely, if Claimant was never assigned, he could have appeared at the investigation if he had any interest at all in working for the Carrier.

The Organization raised the issue of Carrier's failure to notify the "appropriate Local Organization Representative." This issue has been fully discussed in Case No. 164 of this Board and what has been said there is incorporated in its entirety in this Award.

The Carrier did furnish substantial evidence of Claimant's culpability for the charges assessed. The discipline stands.

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: August 6, 2001