

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 169**

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 October 12, 2000, Mr. Marc S. Anderson was dismissed from service for his alleged violation of Rules 1.13 and 1.15 of the Maintenance of Way Operating Rules effective January 31, 1999 including revisions of April 2, 2000, in conjunction with his failing to provide requested medical information and his absence without authority.
2. As a consequence of the Carrier's violation referred to above, the discipline shall be removed from the Claimant's personal record, he shall be reinstated to service with seniority and all other rights restored and he shall be compensated for all wages lost, in accordance with the Agreement.

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 September 22, 2000, the Carrier wrote Claimant setting an investigation because of his:

"...alleged failure to comply with written instructions per Certified Letter, 7099 3220 0004 2636 8445, of September 1, 2000; your alleged absence without proper authority from May 5, 2000 to the present date for failure to provide proper documentation to substantiate your leave of absence; possible violation of Rules 1.13 and 1.15, Maintenance of Way Operating

Rules; effective January 31, 1999, including revisions effective April 2, 2000...."

Claimant, who received the above notice, elected not to attend which is his right under these circumstances, but done at his peril.

The Carrier at the investigation furnished substantial evidence of Claimant's failure to comply with Carrier's instructions, and since Claimant did not attend, the evidence remained unrefuted.

The discipline of dismissal under these circumstances is not an abuse of Carrier's authority.

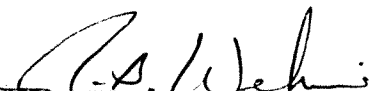
AWARD

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, 2011