

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 18

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

Carrier's decision to dismiss Eastern Region Maintenance of Way employee D. B. Smith, effective May 8, 1995 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from May 8, 1995. (95-11-94/50-13A1-951)

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 February 23, 1995, the Carrier directed the following letter to the Claimant.

"...This is to advise you that, effective February 23, 1995, your seniority and employment with The Santa Fe Railway Company is hereby terminated pursuant to the provisions of Letter of Understanding dated July 13, 1976 for being absent without proper authority for more than five (5) consecutive work days beginning February 13, 1995 forward.

If you dispute the action taken hereinabove, you may, if you desire, request to be given an investigation under the provisions of Rule 13 of the current agreement. Such request for investigation must be made to this office at the address noted below within twenty (20) days from the date of this notice....

If no request for investigation is received in my office within the twenty day period, the matter of your employment termination will be considered closed...."

Claimant timely requested the Investigation, after which, the Carrier reaffirmed its termination of Claimant's seniority and service with the Carrier.

Appendix No 11 clearly spells out the remedy if an employee is absent without authority in excess of five consecutive work days. The employee's seniority and employment is to be terminated. It does not provide any area of compromise. A good work record, years of service, etc., cannot be considered.

Claimant was absent without authority from February 13 through February 23, a period of nine working days.

Claimant at the start of the year, 1995, requested a ninety day leave of absence which was declined. He then asked that he be allowed to take all of his vacation, 20 days, which was granted. Claimant, who prepares and submits his own payroll, completed the second half of January payroll requesting 12 days of vacation, January 16 through 31. He then submitted a payroll for the first half of February asking for 11 days of vacation, but the payroll clerk caught the over claim of the three extra days, February 13, 14 and 15, and it was not paid.

Claimant knew he was entitled to only four weeks (20 days), yet did not explain the excess claimed, simply saying he thought he was on vacation through the 17th of February.

On the 17th, he contacted the maintenance clerk and stated he "wouldn't be back and go ahead and relieve the job." He further stated that after he had called the maintenance clerk on the 17th, he still thought he had 5 days.

Obviously, Claimant was fully aware of Appendix No. 11 and the consequences of being off in excess of 5 consecutive work days, and that he thought he could still be off without authority until

the 24th without jeopardizing his seniority and employment.

Claimant was wrong. He was due back from vacation on the 13th, not the 20th, as he thought. Nor did Claimant contend he was misled as to the vacation due him. He knew he had only 4 weeks vacation (20 days)

Why or how Claimant became confused as to the vacation due him and when he was to report to work is an unknown. Claimant did not furnish any evidence of any circumstances that would permit this Board to mitigate the termination even though the burden was upon his shoulders to do so. Without any valid explanation, the record stands that Claimant was off in excess of five working days without authorization. Pursuant to the terms of Appendix No. 11, Claimant's seniority and employment was properly terminated.


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


C. F. Foose, Labor Member


Greg Griffin, Carrier Member

Dated 1/13/97