

PUBLIC LAW BOARD Ho. 5860

Award No. 181
Case No. 181

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 January 12, 2001, Mr. M. R. Bargas was removed from service and subsequently dismissed from service on March 1, 2001 for allegedly violating Maintenance of Way Operating Rule 1.0 and Engineering Instructions 21.1 and 21.2 in conjunction with his allegedly absent without authority on January 8, 9 and 10, 2001 and for allegedly not showing proper conduct towards lodging employees on January 9 and 10, 2001 at Dumas, Texas.
2. As a consequence of the Carrier's violation referred to above Mr. Bargas shall be returned to service, the discipline shall be removed from Mr. Bargas' personal record and he shall be compensated for all wages lost, if any, 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.

The charges of being absent without authority on January 8, 9 & 10, 2001, should be changed to January 9 & 10, 2001. It was established at the investigation that Claimant had authority to be off on January 8, 2001.

Claimant admits he was off January 9, 2001, without permission, and on January

10, 2001, he showed up for work at a point he was to pick up and drive a fuel truck to the spot where the gang was working. Cbhunt contends ho looked high and bw for the keys to the fuel truck, but could not find them. In lieu of contacting anyone about the truck keys location, Claimant simply went home without notifying • yono.

The Carrier has furnished sufficient • vid8fic8 Of Claimant being AWOL on January 9 & 10, 2001.

Regarding Claimant's conduct while a guest at the motel, the Board finds credibility in the statement • &M by five employees complaining of Claimant's conduct and 8 police report confirming the eviction of Claimant from that motel.

Without delving Into the reasons for the eviction, the Board finds that motels, hotels, etc., do not resort to police evictions of their guests unless the conduct of an individual becomes so obnoxious and/or b so beyond control that said conduct was disrupting the motel's routine.

The Organization has protested the inclusion of statements from hotel clerks as being hearsay, but what has impressed this Board b the statement from the police confirming the eviction of Claimant.

Under the existing circumstances adduced It the investigation, the Board finds that the Carrier furnished sufficient evidence that has established Claimant's culpability for the charges a -d excluding the charge of being AWOL on January 8, 2001.

AWARD

Claim denied.

ORDER

This Baud, after consideration of the dispute identified above, hereby orders that

an award favorable to the Claimant(s) not be made.

Robert L. Hicks

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli

Rick B. Wehrli, Labor Member

Thomas M. Rohling

Thomas M. Rohling, Carrier Member

Dated: Nov. 26, 2001