

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 239**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on November 7, 2002; when, without proving its charges, it issued the Claimant, Mr. R. J. Harr, a Level-S, 60-day suspension, for allegedly violating Rules 1.13, and 1.15 of the Maintenance of Way Operating Rules, and Engineering Instructions 22.5.1, for failing to protect his assignment as a Laborer in Galesburg IL on October 14-16, 2002, inclusive.
2. As a consequence of the violation referred to in part (1), the Carrier shall remove any mention of this incident from the Claimant's personal record, and make him whole for all wages and benefits lost account of this incident.

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.

Claimant did not report to work on October 14, 15 & 16, 2002. As a result, Carrier charged him with his:

"...alleged failure to comply with instructions to contact your Roadmaster to obtain authority to be absent from work, based upon previous incidents, and your alleged failure to protect your assignment as Laborer at Galesburg, Illinois, on October 14, 15 and 16, 2002."

A review of the transcript clearly establishes that Claimant had displaced effective October 14. He did not report on the 14th, nor did he report on the 15th, nor the 16th.

Claimant's record reveals that in April of 2002, he was instructed by the Division Engineer to contact a certain Roadmaster if he was going to be absent. It was the Roadmaster in the territory from which he had worked, not the Roadmaster he was to work under effective October 14, 2002, although he still was working in the same Division Engineer's territory.

On October 14 & 15, 2002, Claimant called in to advise he would not be able to work, but the employees he talked to were not in a position to authorize his absences. On October 16, 2002, he left a voice message on the Roadmaster's phone advising his inability to work on the 15th because of car trouble. (He lives about 25 miles west of Galesburg).

There is no doubting Claimant was absent and that the absences were not authorized, but the alibi for the absences was that Claimant was suffering from a depression.

It was developed at the investigation that Claimant suffers bouts of depression. However, the Carrier only knew was his absentee record starting in June of 1999, with three entries for being absent without authority. The third incident was less than 60 days from this incident. In the third incident, Claimant was assessed a 60 day deferred suspension.

The Carrier could have activated the 60 day deferred when they assessed the 60 day actual for this incident, but this did not happen.

The letter directing Claimant to report to a Roadmaster was written in April of

2002, by the Division Engineer advising Claimant that he had to contact a Roadmaster unknown to this Board. In the letter were listings of both that Roadmaster's telephone number and his cell phone number. But, as of the 14th of October as stated, Claimant did not work under that Roadmaster's jurisdiction. Claimant stated he did not know the phone number of the Roadmaster he was to report to, and he claimed he did not locate that number until October 16th.

If Claimant was suffering bouts of depression, it was not established by him during the investigation. Under these circumstances, and considering that the Carrier did not activate the prior 60 day deferred suspension, the Board accepts the Carrier's right to discipline Claimant as they did in this instance.

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


William L. Yeck, Carrier Member

Dated: October 15, 2003