

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 240**

**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 December 10, 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 Instruction 22.5.1, for failing to protect his assignment as a Laborer in Galesburg IL on October 21-25, 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.**

**On October 28, 2002, the Carrier advised Claimant that an investigation was set to determine his responsibility, if any, in connection with his being off without authorization on October 21, 22, 23, 24 & 25, 2002.**

**The investigation was held in November and on December 10, 2002, Claimant was**

advised that he was being suspended 60 days. This 60 day sentence was to commence January 6, 2003, and end on March 6, 2003. (Claimant's assessment of 60 days in Case No. 239 ended January 5, 2003.)

There is no question, nor dispute, about Claimant being off without authority, but Claimant's contention was that the unauthorized absences came to be because he was suffering from a depression. Claimant did offer sufficient proof of his illness.

There are several troublesome actions of the Carrier in this matter that leads this Board to sustain this case.

First out, the Carrier knew in Case No. 239 that Claimant was off without authorization on the dates listed in this case. His representative questioned why the Carrier did not amend the notice establishing the investigation for unauthorized absences in Case No. 239 to include the dates in this case. In Case No. 239, the investigation was held on October 28, 2002, and on October 28, 2002, the Carrier wrote Claimant establishing this investigation.

Secondly, Claimant contacted his Roadmaster on October 21 via phone message requesting the Roadmaster to advise if he was in or out of service and asked for a return call leaving his phone number.

What insurmountable reason blocked the Roadmaster from calling Claimant and advising him of his status is unknown. It would not in any way taint any investigation now or in the future.

Finally, if Carrier thought 120 days were a proper discipline, they could have activated the 60 day deferred suspension assessed in August of 2002, when they assessed the 60 day actual for not working the dates set out in Case 239. It is as if this

Investigation and assessment was to correct their oversight.

As stated earlier, this claim is sustained. Claimant carried his burden of proof as to why he was off. This Board is not medically trained, but depression is and can be as severe as any other physical illness but is solely mental. It is understandable why Claimant chose to remain silent until this case.

Although this is not an edict of this Award, it is suggested that the EAP people monitor Claimant's condition from time to time to ascertain if he is keeping with the regimen that the EAP should establish for Claimant.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

  
Robert L. Hicks, Chairman & Neutral Member

  
Rick B. Wehri, Labor Member

  
William L. Yeck, Carrier Member

Dated: October 15, 2003