

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Harry Manygoats from service was unjust.
2. That the Carrier now reinstate Claimant Harry Manygoats with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m. December 9, 2003 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 Carrier has an Agreement with the Employees that provides for a termination of services when an individual is absent without authority in excess of five working days.

Claimant was scheduled to work commencing October 13, 2003, but did not show, nor did he seek permission from anyone in authority.

A letter of understanding dated July 13, 1976, reads as follows:

"In connection with the application of (Rule 13) of the current Agreement, this will confirm our understanding reached in conference today that, effective October 1, 1976, to terminate the employment of an employee who is absent from duty without authority, the Company shall address, by Registered or Certified Mail, return receipt requested, with copy to the General Chairman, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may, within 20 days of the date of such notice, if he desires, request that he be given an investigation under (Rule 13) the current Agreement.

NOTE: Effective January 1, 1984, the above understanding is to be applied only in cases where the employee is absent from duty without authority more than five (5) consecutive work days."

Claimant timely exercised his right to an investigation. At the investigation, Claimant was not able to establish that Carrier was in error.

It is the opinion of this Board that Carrier's actions were proper pursuant to the 1976 letter of understanding as amended. The request for reinstatement and pay for time lost is denied.

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:

2/27/04