

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 26

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 J.B. Price, effective March 8, 1996 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 March 8, 1996. (04-26-AB/130-13A1-961)

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 January 5, 1996, the Carrier advised Claimant as follows:

"...This is to advise you that, effective January 5, 1996, your seniority and employment with Burlington Northern Santa Fe 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 December 26, 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...."

Claimant timely requested the Investigation which was held on March 6, 1996, following

which the Carrier reaffirmed the termination of Claimant's services

Appendix No. 11 clearly, in unambiguous language, provides that if an employee is absent more than five consecutive work days without authorization, his seniority and employment with the Carrier will be terminated.

The purpose of an Investigation is to establish that Claimant did have authorization to be absent or to present evidence as to why he was prevented from calling in. Claimant requested the Investigation, thus the substantial evidence burden usually shouldered by the Carrier in disciplinary cases shifts to the employee.

If Claimant's problem was as described in the Investigation, someone should have contacted his supervisor and explained what was occurring before the window of time set forth in Appendix No. 11 expired. Even when Claimant's father contacted his son's supervisor seeking the number of a counselor in the Employees Assistance Program, he never stated why he was calling.

Dialogue - communication - that's what is required. The Carrier is entitled to know why an employee is off and the prospects of a return to service. Appendix No. 11 is a mutual agreement that provides a remedy for anyone who runs afoul thereof. The parties to the Agreement can waive the terms and conditions of Appendix No. 11 at any time they desire, but this Board is limited to interpreting and applying the Agreement as written.

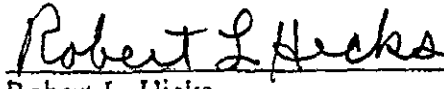
Claimant admitted he never received authorization to be off in excess of five consecutive work days, nor has there been any evidence presented that would support the clinical depression allegedly suffered by Claimant. Carrier's decision to terminate Claimant's seniority pursuant to Appendix No. 11 will not be disturbed.

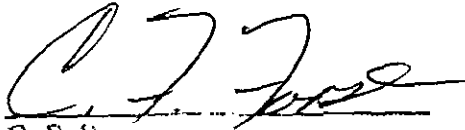
AWARD

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