

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 292**

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 January 10, 2006 when it dismissed Claimant, B. Guerrero, for alleged failure to comply with instructions set forth in the October 26, 2005 waiver.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from his personal record, and make him whole for all time lost commencing November 24, 2005.

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 November 10, 2005, the Carrier wrote Claimant an investigation was being convened:

"...to ascertain the facts and determine your responsibility, if any, in connection with your failure to comply with instructions as listed in Level S 30-Day Conditional Actual Suspension dated October 26, 2005 (copy attached for your ready reference), i.e., you did not contact Employee Assistance Manager Amy Pool by November 1, 2005."

Claimant was assessed a 30-day conditional actual suspension for violating Rule 1.15. Also in the notice of discipline, the Carrier instructed Claimant that he, "must

contact Amy Pool, Employee Assistance Manager, at 817-352-1622 by November 1, 2005 and comply with her instructions."

Claimant did not contact the EAP Manager by November 1, 2005. He did however report to EAP on November 22, 2005. Testimony was that Claimant responded as instructed by EAP. He contends he read the letter over a number of times but contends he did not see the deadline of November 1, 2005.

The Carrier believed it had furnished sufficient evidence establishing Claimant's culpability for the charges assessed and dismissed Claimant from service.

The termination seems to be a bit harsh. Claimant hired out January 24, 1974. He was a 31 year veteran, but a review of Claimant's discipline record reveals that starting in 1996 through October of 2005, not counting this incident, he had been disciplined 12 times. He was terminated once in 2001, but reinstated on a leniency basis after losing 4 months of work. Most all causes were his unauthorized absences from work.

Claimant has had a number of chances to clean up his act but apparently he must believe the Carrier is not serious in this regard.

Under the circumstances, the termination of service is not harsh when considering his discipline record.

Carrier's decision to dismiss will not be disturbed.


AWARD

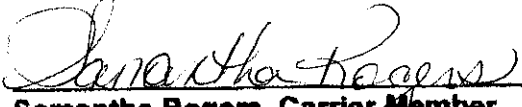
Claim denied.

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


David D. Tanner, Labor Member


Samantha Rogers, Carrier Member

Dated: 11/29/06