

PUBLIC LAW BOARD NO. 5850

Award No. 295
Case No. 295

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 25, 2006 when Claimant, B. Castaneda, was terminated for being absent without authority more than 5 days pursuant to Letter of Understanding dated July 13, 1976; and
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 Claimant's personal record, and make Claimant whole for all time lost commencing April 10, 2006.

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 25, 2006, the Carrier wrote Claimant as follows:

"This is to advise you, effective this date your seniority and employment with the BNSF Railway Company 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 January 16, 2006, and 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) calendar days from the date of this notice."

Claimant timely requested an investigation but did not attend.

Since Claimant requested the hearing, which was his opportunity to refute Carrier charges of being absent in excess of five consecutive working days but chose not to attend, Carrier's charges went unchallenged. Under these circumstances, the dismissal by Carrier of Claimant was clearly in accordance with an existing Letter of Agreement between the parties.

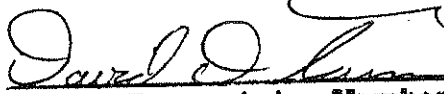
AWARD

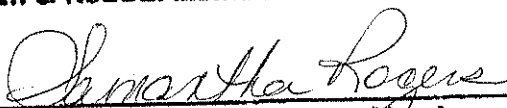
Claim denied.

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: 6/20/2007