

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 333**

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 commencing April 17, 2008 when Claimant, N. D. McWhite (1689363) was dismissed pursuant to Appendix 11, Letter of Understanding dated July 3, 1976 for allegedly being absent without authority for more than 5 days and continuing violating Maintenance of Way Operating Rule 1.15 - Duty-Reporting or Absence, and:
2. As a consequence of the violation referred to in part 1 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing April 17, 2008, and remove any mention of discipline from their records.

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.

Claimant was absent without authority commencing January 23, 2008, through April 17, 2008. The Rule allegedly violated by Claimant was Rule 1.15, which reads:

"Duty - Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their

employment will be cause for dismissal. (Emphasis added)."

An investigation was scheduled but Claimant can choose in most instances to elect not to appear at the investigation. In cases where the Claimant did not show up for the investigation, the evidence presented at the investigation was not challenged. Claimant elected not to attend.

The Carrier, pursuant to Rule 1.15, dismissed Claimant from the service of the Carrier.

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, For the Employees


Samantha Rogers, For the Carrier

Dated: 11/14/08