

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 35

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 M. Carswell, effective November 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 November 8, 1996. (01-15-AA-97/10-13A1-9611)

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 September 10, 1996, the following letter was sent to Claimant.

"This is to advise you that, effective September 10, 1996, your seniority and employment with The Santa Fe 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 August 29, 1996 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

If no request for investigation is received in my office within the twenty day period, the matter of your employment termination will be considered closed."

Claimant requested an Investigation which was scheduled for and held on October 16, 1996, following which Carrier reaffirmed its termination of Claimant's seniority and employment rights.

Claimant was knowledgeable of the date of the Investigation, but opted not to attend. During the Investigation, Carrier presented un rebutted evidence that Claimant was absent in excess of five consecutive work days without authorization.

The purpose of the Investigation is to give the charged employee an opportunity to establish a bonafide reason for his unauthorized absences. When Claimant opted not to appear, there was nothing proffered that would in any way lead to a mitigation of damages. Claimant was absent without authority in excess of five consecutive work days. When this occurs, pursuant to Memorandum No 11, the employee's seniority and employment rights are terminated.

AWARD

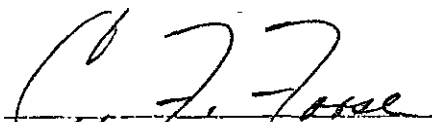
Claim denied.

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 Griffio, Carrier Member

Dated June 9, 1997