

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 40

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

Carrier's decision to dismiss Central Region Maintenance of Way employee H. Frank, effective October 21, 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 October 21, 1996. (012-18-AB/170-13A1-9610)

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, Claimant received a letter from the Carrier advising that pursuant to the provisions of an understanding dated July 13, 1976, his seniority and employment were being terminated for being off without authority in excess of five consecutive work days.

Claimant was also advised that if he disputed Carrier's records, he could request an Investigation within 20 days from the date of the notice. Claimant timely requested an Investigation which was held on October 21, 1996, following which, the Carrier reaffirmed its termination of Claimant's seniority and employment rights.

During the Investigation, Claimant did establish that on September 3, 1996, while on the way to work (he was working 400 miles from his home) his car broke down. He hitch-hiked back home and arranged for his car to be towed.

Claimant contends he made several unsuccessful attempts to contact his Supervisor, and although voice mail on his Supervisor's line was available, he opted not to leave a message wanting only to speak to his Foreman.

Communication is the bane of existence. How Claimant thought his Supervisor would know of his plight without being told is a mystery to this Board, and this reluctance has cost Claimant some eight months in wages. To his favor, however, is the fact that he was on his way to work when his car failed and he did make some effort to advise his Foreman of his situation.

Under the circumstances, this Board will reinstate all of Claimant's seniority rights, but there will be no compensation for time lost. Claimant is to understand that this is his last chance for continued employment with the Carrier. In a relatively short time, Claimant has gained an unenviable disciplinary record and one more offense could very well end his career with this Carrier.

AWARD

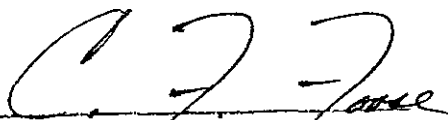
Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foose, Labor Member


Greg Griffin, Carrier Member

Dated