

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 50

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level 1 Suspension for Eastern Region, Randall J. Arnold from service for forty-five (45) days was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 2:00 p.m., May 28, 1997 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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, while off-duty, suffered an injury to his knee. He was off December through January 6, then on light duty until February when he underwent reconstructive surgery. The Carrier was fully aware of Claimant's condition as he had been granted a leave of absence until April 4. On April 4, Claimant appeared at a Roadmaster's office, stating he needed an extension to his leave, and that he was going to the Doctor that day.

Claimant returned to the Roadmaster's office with a completed 1516 requesting an extension until May 6, but he did not talk with the Roadmaster as he was on the phone when Claimant arrived, thus Claimant left the form on the Roadmaster's desk.

At this juncture, the record becomes confusing. The Roadmaster stated that when he reviewed Form 1516 he found no attached Doctor's slip, thus he called the office and the Doctor's nurse extended the leave only until April 10. Why until April 10 is an unknown factor as Claimant's 1516 sought an extension until May 6.

Nevertheless, the Carrier wrote Claimant on April 11, advising his leave had expired, and receiving no response invoked the provisions of Appendix No. 11 terminating Claimant's seniority and employment rights in a letter dated April 22.

As a result of Claimant's timely request, a hearing was held after which Carrier rescinded its termination letter and in lieu assessed a 45 day actual suspension from service to be served commencing with the first day Claimant would be able to resume service.

Claimant, at the hearing, denied knowledge of the April 11 letter advising his leave had expired on April 10, and in lieu furnished a Doctor's note advising that he would have to be off until at least July 6. Again, there is no clarification or explanation for the Roadmaster's testimony of the leave expiring on April 10 and Claimant's letter from the attending physician stating Claimant had to be off work at least until July 6.

Under these circumstances, the claim is sustained. There is some confusion about the April 10th expiration of leave and the advice of the attending physician to extend the leave until July 6, but this confusion should not result in discipline to Claimant. He had a statement from his Doctor about his condition, and this Doctor's advice that Claimant stay off work until July 6.

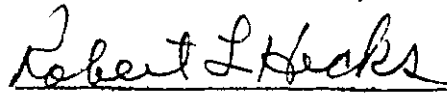
AWARD

Claim sustained.

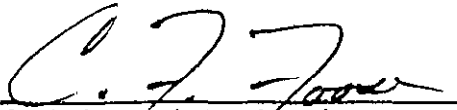
ORDER

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

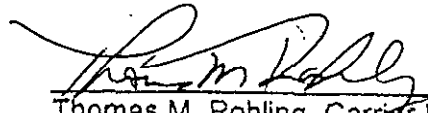
before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foose, Labor Member



Thomas M. Rohling, Carrier Member

Dated: