

PUBLIC LAW BOARD NO 5850

Award No. _____
Case No. 65

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated Rule 13, and Appendix No. 11, when Orlando Heath was dismissed from service based on his allegedly being absent without authority from on August 13, 1997.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to service with all seniorities, vacation and benefit rights restored and compensated for all wage loss beginning September 9, 1997, and continuing.

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 August 22, 1997, Carrier advised Claimant, in a letter, as follows:

"You are hereby notified to attend formal investigation in the Superintendent's Office...on Tuesday, September 9, 1997, at 9:00 a.m., to determine the facts and place responsibility, if any, concerning your alleged absence without proper authority on August 13, 1997, in possible violation of Rules 1.3.1 and 1.15 of the Maintenance of Way Operating Rules, effective August 1, 1996."

The facts are not in dispute. Claimant, as is his option, but at his peril, elected not to attend the investigation. Neither his representative nor the Carrier had heard from Claimant prior to the investigation, which was delayed until 9:35 AM in the event Claimant was held up by traffic.

Without Claimant's presence at the investigation, Carrier's presentation of the facts was not challenged, thus Claimant's culpability for the charges was clearly established.

The Organization has argued the discipline was too harsh. The Board, however, cannot agree. Claimant's record reveals that from December 13, 1996, through July 20, 1997, on three separate occasions he was disciplined for being AWOL. He simply did not report to work, nor did

he seek permission to be off. He simply did not show. For these violations, Claimant was assessed 87 days suspension, and then, in less than one month from his return after concluding a 60 day suspension, he did not show for work nor did he call.

No business can tolerate such conduct. Each job exists because the Carrier has a need therefore, and when an employee that is assigned, does not show, does not call in, the work planned for the day suffers.

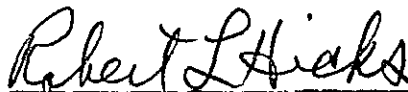
The discipline in this instance is justified by Claimant's own conduct. It is obvious he is not interested in pursuing a career with the Carrier.

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



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: April 6, 1998