

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 68

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Eastern, Trackman G. B. Upton was unjust.
2. That the Carrier now reinstate Claimant Upton with seniority, vacation, all benefits rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m. February 24, 1998 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 Claimant violated the rules enumerated in the decision, removal 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 was absent without proper authority on January 28, 29, 30, 31, February 3 and 4, 1998.

Appendix No. 11 provides that an employee absent more than five consecutive work days without authorization will have seniority and employment terminated. Claimant was so advised in a letter dated February 5, 1998.

The Agreement does permit the employee an investigation if he requests same, and the purpose of that investigation is to permit Claimant the opportunity to explain why he was absent

without authority.

At the investigation, Claimant stated he was in jail on the dates listed in the termination notice, however, being in jail is not a sufficient reason to gain the authority necessary to be off.

The Carrier, after the investigation, reaffirmed its termination letter and properly so.


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: