

(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 Southern Region, Welder "B" D. L. Stuart from service was unjust.
2. That the Carrier now reinstates Claimant Stuart with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 1520 hours, May 19, 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 the 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 dismissed for being insubordinate, quarrelsome and discourteous on May 8, and for insubordination on May 12, 1998.

Claimant is a Class B Welder whose function is to work with and assist Class A Welders.

From the transcript it appears that the less than congenial attitude of Claimant had its genesis in an incident that occurred on the Saturday preceding May 8.

Claimant was of the belief that the Class A Welder (LeVerne Desmond) for whom Claimant was assisting, somehow worked it out that Claimant missed a call for Saturday work. According to Desmond, Claimant was mumbling and grumbling about the lost work opportunity with an eruption

of emotion occurring on May 8, 1998, when Claimant refused to perform a task requested by Desmond, and referred to Desmond using derogatory adjectives. There was no violence or threats of violence, just words. Compounding Claimant's problem was the inquiry lodged by the Division Engineer wherein on May 12 Claimant refused to discuss the May 8 incident. Claimant was, therefore, suspended from service pending the outcome of the investigation.

Routinely, suspension pending an investigation is used only in those instances where Carrier believes continued employment to the time of discipline would, in some way, be detrimental to the health and safety of the Claimant and to others that he worked with. Perhaps that was the belief of the Division Engineer when Claimant was suspended, but the reason for the suspension was never really articulated other than the Division Engineer's determination to suspend Claimant, not because he believed Claimant's continued service would somehow be disruptive or that he could possibly cause harm to himself or others, but it was for his reluctance to discuss the May 8 incident.

It is clear, however, from Claimant's conduct while working with and for Desmond, it could have led to a volatile situation between the two.

As this Board has been reminded, the Maintenance of Way work place is not a tea-room atmosphere. The dialogue can be of a type not suitable for family gatherings, but under no circumstances can racial slurs or bigotry be tolerated, even when the two antagonists are of the same race.

Claimant has not worked for the Carrier since May 12, 1998. Surely, he has had ample time to reflect upon what led to his being dismissed and has learned from it.

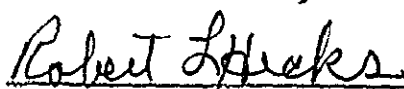
This Board will reinstate Claimant to service, without pay for time lost, with all his seniority rights intact except that he is not to work with Desmond for a period of one year from the date he is reinstated, and during that year he is to work with an EAP Counselor to develop a method whereby he can vent his frustration and anger other than doing so in the manner he did in this instance.

AWARD

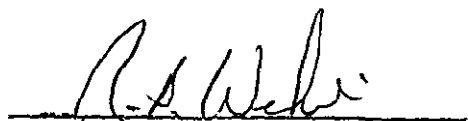
Claim sustained in accordance with the Findings.

ORDER

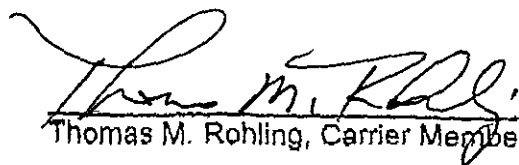
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: August 26, 1998