

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Southern Region, Machine Operator T. G. Greer from service was unjust.
2. That the Carrier now reinstates Claimant Greer with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 12:00 p.m. 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.

This crew works under the Burlington Northern Schedule Agreement. Rule 40B reads as follows:

"...In the case of an employe who may be held out of service pending investigation in cases involving serious infraction of rules the investigation shall be held within ten (10) days after withheld from service...."

Claimant was withheld from service May 7. The investigation was held on May 19, twelve days after being withheld from service.

Rule 40J reads:

"...If investigation is not held or decision rendered within the time limits herein

specified, or as extended by agreed-to postponement, the charges against the employe shall be considered as having been dismissed...."

Claimant's representative timely challenged the belated notice and requested the investigation be canceled. Section J of Rule 40 leaves this Board no other choice. It must consider the charges as having been dismissed. The claim will be sustained. Claimant is to be paid for all time lost in accordance with the practice on the property.

This Board does so solely because of the Agreement even though the charges are serious, and had it not been for the administrative glitch of the belated notice, the decision would clearly have been different. Claimant, at the time of his dismissal, was subject to random testing because of an earlier violation of Rule 1.5.

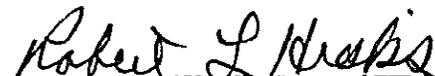
Whatever guidelines governed Claimant's return to service after the first violation of Rule 1.5 are reinstated right along with Claimant's seniority.

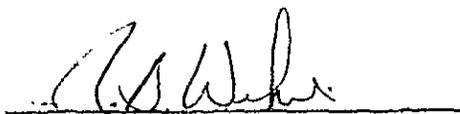
AWARD

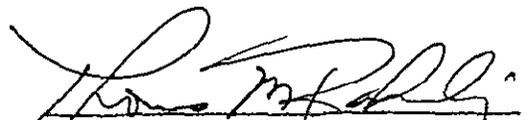
Claim sustained in accordance with the Findings.

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: November 2, 1998

I dissent.

PUBLIC LAW BOARD NO 5850
INTERPRETATION TO CASE NO. 81

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

The Board, in Case No. 81, stated that Claimant was to be paid for all time lost in accordance with the practice on the property. The intent was to keep Claimant whole for all time he was withheld from service. This edict, however, was subject to the practice on the property.

It has been determined that even though Claimant was reinstated, i.e., his seniority was restored, that he could not have worked as the Carrier's Medical Department had not cleared him to return to service. Claimant's lost wages, therefore, are attributable to the Medical Department's decision to withhold Claimant from service. If Claimant could not work from the date of being withheld from service in Case No. 81 up to the time of the Award because of "medical disqualification," then Claimant's lost wages were not attributable to the erroneous actions of the Carrier, but because of a lack of medical certification to resume work. Carrier's determination not to pay Claimant under these facts are in harmony with this Board.

Robert L. Hicks
Chairman of Neutral
Members