

(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 Issue a Level 1 Formal Reprimand & placed on a three year probation period for violation of Rule S-28.6 of Safety Rules and General Responsibilities for all Employees, in effect March 1, 1997, as supplemented or amended, was unjust.
2. That the Carrier now rescinds their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held 10:00 A.M. June 26, 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, a Formal Reprimand 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 is a track patrolman responsible for patrolling a specific section of track for defects. During the months of extreme heat, sun kinks do occur that must be corrected to prevent potential derailments.

Due to budgetary constraints, the Carrier set in motion several policies in an effort to reduce the cost of operations. An e-mail to Claimant and others dated February 18, 1998,

reads as follows:

"...no operating overtime is to be worked without specific approval of the Roadmaster...."

Again, on May 20, 1998, the Roadmaster furnished copies of an edict he had received from his Supervisor to all his subordinates. That edict read, in part, as follows:

"...all overtime must be only to protect the service, and then only with the Roadmaster's approval...."

Then on June 1, 1998, the Roadmaster discovered Claimant working overtime without his approval and verbally admonished Claimant for doing so. Three clear unambiguous edicts concerning overtime were delivered to Claimant, twice in writing and once verbally, yet on June 2, 1998, without seeking the Roadmaster's authority, Claimant worked overtime.

Claimant clearly was insubordinate by ignoring the overtime directions. He may very well have been authorized to work overtime on June 2, 1998, had he but asked the Roadmaster's permission, but he did not.

Claimant had a fellow patrolman testify that on June 1, 1998, he worked overtime with Claimant and the crew correcting a sun kink, yet the Roadmaster said nothing to him about working overtime without authority nor was he cited for doing so. Claimant's witness did testify that he knew it was necessary to seek authority to work overtime. This defense does not, however, convince this Board that the charges against Claimant should be nullified. It is akin to a defense a ticketed speedster would raise before the judge pleading that he was not the only speeder at the moment at that location, yet he got ticketed. The judge would probably reply that he was the only one caught and that fact that others in like circumstances were not had no bearing on his violation.

Claimant, to reiterate, had two written and one oral warning of the necessity to secure

authority to work overtime. For whatever reason, he chose to ignore the policy changes and he did so at his peril.

The Carrier did establish Claimant's culpability for the charges assessed. The discipline will not be disturbed.

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: November 3, 1998