

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 99

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employes
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on September 8, 1998, the Carrier dismissed Mr. R. Reyes for alleged violation of Rules 1.15, Duty-Reporting or Absence and Rule 1.3.1, Rules, Regulations, and Instructions of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged being absent without proper authority commencing on July 1, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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 July 11, 1998, Carrier wrote Claimant as follows:

"...This is to advise you that, effective July 11, 1998, your seniority and employment with The Burlington Northern Santa Fe Railway Company is hereby terminated pursuant to the provisions of Letter of Understanding dated July 13, 1976 for being absent without proper authority for more than (5) consecutive working days beginning July 1, 1998 through the present.

If you dispute the action taken hereinabove, you may, if you desire, request to be given an investigation under the provisions of Rule 13 of the current agreement. Such request for investigation must be made to this office at the address noted below within twenty (20) days from the date of this notice.

If no request for investigation is received in my office within the twenty day period, the matter of your employment termination will be considered closed...."

That portion of the termination letter reading in part:

"...If you dispute the action taken, you may request a hearing...."

is the employee's one chance to prove that Carrier's facts are wrong, that he did have permission to be off, or that he was incapacitated by illness or injury to the extent that he could not call in to seek permission to be off.

All that Carrier is required to do is to present testimony showing Claimant was off unauthorized in excess of five consecutive work days. The Carrier did establish this fact, and when Claimant had the opportunity to refute Carrier's testimony, he did not do so. He admitted he was not at work on July 1. When asked why, he stated he was physically incapacitated. He refused, however, to elaborate. It was not up to the Carrier to establish by sufficient evidence that Claimant could not have called in. That burden was Claimant's, and this he failed to meet.

Claimant's termination is affirmed. He was off in excess of five consecutive work days without authorization.

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
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli
Rick B. Wehrli, Labor Member

Thomas M. Rohling
Thomas M. Rohling, Carrier Member

Dated: March 26, 1999

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