

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 13

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the current Agreement when dismissing Mr. C. A. Barger from service for his alleged violation of Rule S-28.14 of the BNSF Safety Rules and General Responsibilities for all employees when he was allegedly absent without authority.
2. As a consequence of the Carrier's violation referred to above, Mr. Barger shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

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 scheduled to work at 6:30 AM, December 12, 1997. He reported at 7:20 AM contending he overslept. He was not allowed to work that day, and on December 15, 1997, he was dismissed from service for the unauthorized absence on December 12, 1997.

After receipt of the dismissal notice, he did request a hearing. Claimant reiterated his reason for being 50 minutes late on December 12.

The Carrier testified that Claimant was part of a four man work unit that required the presence of all four to work safely. The Carrier also testified that it was after 7:00 AM before they found a fourth man to fill out the crew.

This is Claimant's fourth instance of being AWOL in less than 12 months. Each

instance the discipline was more severe, starting with a one day suspension, then a 15 day suspension, then a 20 day suspension, all for the same charge - being absent without authority. Besides this being the fourth such occurrence in 1997, Claimant has been disciplined four other times prior to 1997 for the same reason - being absent without authority.

The purpose of an investigation and discipline is two-fold. It acts as a deterrent to others, and it is intended as a wake up call for the individual. Claimant had been told after his third suspension that the next time would be a dismissal. Claimant, obviously, chose not to heed the Carrier's warning, and proceeded to work without changing his work habits.

The Board is also taken aback with his defense, that since Carrier had an extra employee who reports at 7:00 AM and works wherever he is assigned, that Claimant's crew should not have lost too much work time on December 12.

Whether the extra employee was available or not, whether he was assigned or not, does not mitigate Claimant's actions.

In view of Claimant's record, his attitude towards work and his lack of accepting responsibility for his dismal work record, this Board affirms the Carrier's decision to terminate Claimant from the services of the Carrier.

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, Neutral Member & Chairman
Public Law Board 6103

Dated: April 30, 1999

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