

PUBLIC LAW BOARD NO. 4244

Award No. 207

Case No. 212

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

Claim on behalf of Central Region Maintenance of Way
Employee F. T. Urioste for reinstatement with all seniorities,
vacation and benefit rights restored and compensated for all
wage loss beginning April 15, 1996, and continuing.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

In correspondence dated March 18, 1996, the claimant, machine operator F. T. Urioste, was notified that his seniority and employment with the Carrier was terminated due to his being absent without proper authority for more than five consecutive work days. The claimant timely exercised his right to an investigation pursuant to the provisions of Appendix No. 11 to the collective bargaining agreement. A formal investigation was conducted on May 3, 1996, and claimant was dismissed from his employment with the Carrier for violation of Rules 1.15 and 1.16 of the Safety and General Rules for All Employees, effective January 31, 1996.

The claimant was headquartered at Dumas, Texas, and assigned work on an independent ballast regulator with scheduled hours of work from 7:30 a.m. to 4:00 p.m. Claimant failed to report for work on March 8, 11, 12, 13, 14 and 15, 1996, and he did not have permission to be off work on those dates. According to the roadmaster who testified at the formal investigation, after five consecutive days of AWOL, the claimant was notified of his removal from service.

On March 13, 1996, the claimant telephoned the clerk's office in Kansas City, and the call was transferred to roadmaster Duane Befort in Amarillo, Texas. Roadmaster Befort supervised the gang to which the claimant was assigned. The claimant stated he was having "problems with his family," and Befort informed the claimant he was AWOL. The claimant stated he understood his AWOL status. Befort instructed claimant to report to the

section gang in Dumas, and to work with the gang for the balance of the day until such time as his machine was repaired.

The claimant admitted he failed to work any of the days cited in the notice of investigation, nor did he have permission not to work on those dates. Claimant indicated he was off work due to efforts by his ex-wife to leave Texas with their daughter, and he was not focused on his work at the time. At the time of the formal investigation the claimant had custody of his daughter. He claimed to have sent correspondence to his supervisor via e-mail; however, the supervisor was on vacation during the period of absence set forth in the notice of investigation. The claimant testified the supervisor had saved the e-mail correspondence, and if claimant needed copies the supervisor had agreed to provide them to the claimant. However, the claimant stated he was too busy to contact the supervisor and obtain copies of his correspondence for the formal investigation. He also admitted he never requested an emergency leave of absence or vacation to take care of his family problems.

The Board finds the claimant absented himself from duty without proper authority. The Board further finds that the testimony of the claimant and the roadmaster unequivocally establishes the claimant was without permission to absent himself from duty on March 8, 11, 12, 13, 14 and 15, 1996. The claimant offered no proof that he suffered from personal family problems such that he was precluded from reporting for duty, or timely notifying his supervisor or roadmaster of the reason for his consecutive absences from duty.

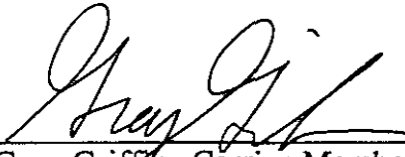
There was no evidence the claimant either requested or was denied an emergency leave of absence, or vacation period, to address his personal difficulties.

The Board concludes that claimant violated the rules with which he was charged. Moreover, despite his brief tenure with the Carrier the claimant was well aware of his obligation to report for duty, and the fact he could not be absent from duty without proper authority. A review of claimant's record indicates he was cautioned on September 25, 1995, for failing to report for duty and the importance of Rule 1.15. On October 24, 1995, claimant was issued a Level 1 deferred suspension of fifteen days for a violation of Rule 1.15.

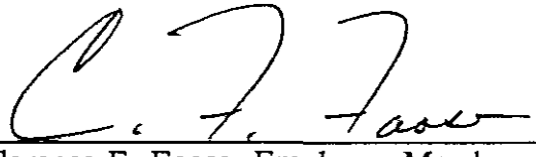
In his brief tenure with the Carrier, the claimant evidenced an inability to report for duty as required, and despite prior warnings he continued to disregard his obligation to his employer. This was not an isolated incident of a single day of absence, but a continuous absence of five days or more without authority. When notified of his AWOL status and instructed to report for duty after several days of unreported absence, the claimant failed to do so. For these reasons, the Board cannot set aside the discipline assessed as excessive or subject to modification due to mitigating circumstances.

AWARD

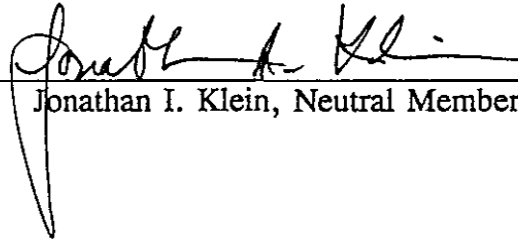
The claim is denied.



Greg Griffin, Carrier Member



Clarence F. Foose, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 22 day of April, 1997.