

PUBLIC LAW BOARD NO. 4244

Award No. 214

Case No. 221

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Parties to Dispute:

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to remove Eastern Region, R. Amezcqa from service was unjust.
2. That the Carrier now reinstate Claimant Amezcqa with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 10:00 a.m., March 10, 1997 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, suspension 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.

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

The claimant, R. Amezcga, an operator on a regional tie gang working in Flynn Yards, Oklahoma City, was sent a notice of investigation dated February 24, 1997. The notice alleges that claimant was absent from duty without proper authority and failed to comply with instructions by absenting himself from duty for the period January 23, 1997, through February 24, 1997. In addition, the notice of investigation alleged a failure by the claimant to obtain a proper leave of absence in violation of Rule 15, Part C of the September 1, 1982, agreement between the Carrier and Organization.

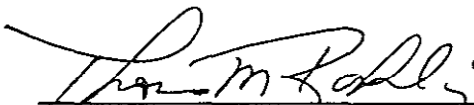
The notice of investigation was delivered by certified mail to the claimant's last known address on February 28, 1997, and a formal investigation was conducted on March 10, 1997, in Kansas City, Kansas. A representative for the claimant was in attendance, but the claimant failed to appear without explanation.

Testimony by claimant's immediate supervisor, assistant roadmaster Gary Bonus, established that the notice of investigation was properly mailed to the claimant. The claimant continued to remain absent from work as of the date of the investigation without notice to the Carrier of his whereabouts, and without a request for a leave of absence from his employment.

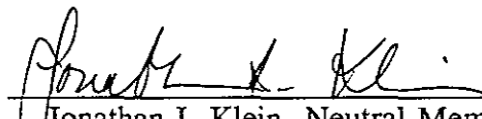
The Board finds that the Carrier met its burden of proof that claimant was absent without authority from January 23, 1997, to and including the date of the formal investigation on March 10, 1997. There is no evidence whatsoever of any mitigating factors which might explain the claimant's absence from work. The claimant failed to report to his supervisors and failed to request a leave of absence. In sum, the facts before the Board clearly establish that claimant effectively abandoned his employment relationship with the Carrier, and his dismissal from service was just.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


Clarence F. Foose, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 19th day of August, 1997.