

PUBLIC LAW BOARD NO. 4244

**Award No. 224
Case No. 230**

Parties to Dispute: (**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYES**
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(**-and-**
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(**BURLINGTON NORTHERN SANTA FE RAILWAY**
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- Statement of Claim:**
1. The Carrier violated the Agreement when dismissing Mr. R. J. Madewell from service in connection with his alleged violation of MWOR 1.13- Reporting and Complying with Instructions, and MWOR 1.15- Duty-Reporting or Absence, in connection with his alleged failure to comply with instructions and his alleged absence without authority on November 11, 1997.
 2. As a consequence of the Carrier's violation referred to above, Claimant shall be paid for all time lost, and the discipline removed from his record.

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

On November 7, 1997, the claimant, R. J. Madewell, arrived at work twenty minutes late. Claimant's supervisor, Andy Rodriguez, observed this tardy, but determined it warranted no discipline at this time. On November 10, 1997, the claimant again arrived late for work. Supervisor Rodriguez had a discussion with the claimant and advised him not to arrive late for work in the future. On both occasions, the Carrier paid the claimant for an eight-hour work day.

On November 11, 1997, the claimant again arrived late for work. This time the Carrier sent the claimant home. The Carrier then notified the claimant to attend an investigation to determine the facts and his responsibility, if any, concerning his late arrival for work on November 7 and 10, 1997, and his absence without proper authority on November 11, 1997.

As a result of the investigation held on December 4, 1997, the claimant was dismissed from service by the Carrier for violating Rules 1.3.1 and 1.15 of the Maintenance of Way

Operating Rules (MWOR). The Board finds that the evidence of record supports this decision for the following reasons.

The following Rules of the MWOR are applicable to the Board's decision in this case. Rule 1.3.1 of the MWOR provides: "Employees must have a copy of, be familiar with, and comply with all safety rules issued in a separate book or in other form." Rule 1.15 "Duty-- Reporting or Absence," of the MWOR provides: "Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority."

The investigation reveals that the claimant did not report for duty at the designated time and place on the dates at issue. Although the claimant was only minutes late on two of the occasions, the Carrier has nonetheless satisfied its burden that the claimant violated Rule 1.15 of the MWOR.

Additionally, the record reveals that the claimant's work history is filled with numerous incidents regarding failure to comply with instructions; missing calls; and absences without leave. Moreover, P.L.B. 5850, Awd. 53 also involved the claimant. In modifying claimant's dismissal to a lengthy suspension, P.L.B. 5850 stated:

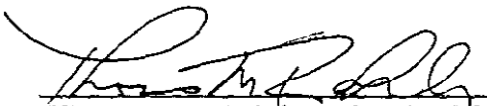
Claimant is to be returned to service with all his seniority intact, but without pay for time lost commencing with the day of the Investigation until the day of his actual return. Claimant must, however, recognize that if there is another incident warranting the invocation of the disciplinary process, claimant's work record could readily support a permanent bar to his future as a Trackman even though this

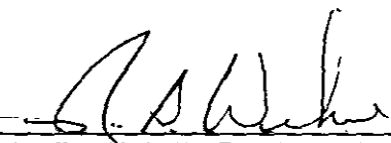
incident, itself, would be deemed minor in nature.

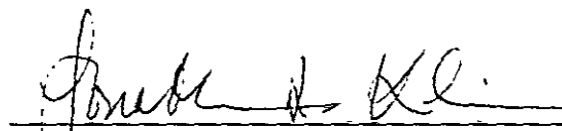
P.L.B. 5850, Awd. 53 was issued on October 23, 1997. The claimant's violations in the case at issue followed within three weeks of his reinstatement to service. For each of the foregoing reasons, the Board finds that the Carrier was warranted in dismissing the claimant, and the claim must be denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 7th day of October, 1998.