

PUBLIC LAW BOARD NO. 4244

Award No. 236

Case No. 243

Carrier File No. MWE981106AC

Organization File No. 240-13A1-9845.CLM

Parties to Dispute:

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**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

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BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on October 19, 1998, the Carrier issued a Level 3, Suspension of 30 days to Mr. N. R. Kee, for alleged violation of Rule 1.15, Duty- - Reporting or Absence, of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged being absent without authority on August 25 through 31, 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.

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 was working for the Carrier as a laborer on assignment RP09 during the dates at issue in this case. On Sunday, August 23, 1998, the claimant, while located at his residence in Chambers, Arizona, telephoned foreman Randy Hardin and informed him that he was unable to make it to work. The claimant was scheduled to report for duty at Farthing, Wyoming on August 24, 1998. Farthing is located approximately 900 miles from the claimant's residence in Arizona. Subsequently, the claimant failed to report for duty as scheduled on August 25-31, 1998.

The claimant was notified by the Carrier to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged

failure to report for duty at the designated time and place on August 25, 26, 27, 28 and 31, 1998, while assigned as a laborer on PEB RP09. As a result of the investigation conducted on September 16, 1998, the Carrier suspended the claimant for a period of thirty days for violating Rule 1.15 of the Maintenance of Way Operating Rules (MWOR).

The following rule is applicable to the Board's decision in this case. Rule 1.15 of the MWOR, entitled "Duty- Reporting or Absence," provides, as follows: "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."

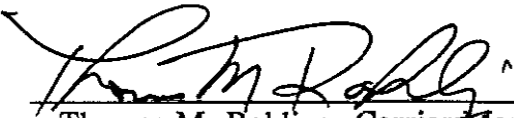
At the investigation, the claimant testified that the Carrier did not authorize him to be absent from duty on each of the dates which are at issue in this case. Additionally, the claimant testified that he did not notify the Carrier each day that he was absent from his assignment. However, the evidence reveals that the claimant did indeed notify the Carrier on August 23, 1998, that he would not be able to report to his assignment as scheduled. The claimant testified that he did not receive the proper compensation from the Carrier in his last paycheck. The claimant's paycheck only consisted of a per diem compensation for two days in the amount of \$42.00. Without a paycheck in the proper amount, the claimant testified that he did not have sufficient funds to travel from Arizona to his work assignment in Wyoming, and afford the necessary living expenses for the work week. At the investigation, the Carrier did


not present any probative evidence which would indicate that the claimant received the proper compensation.

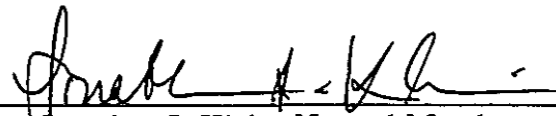
Based upon the facts presented in this case, the Board finds that the Carrier contributed to the claimant's absence by a delay of proper compensation. Without sufficient funds, the claimant was stranded at his residence until such time as the Carrier resolved the error regarding the claimant's compensation. However, the claimant had an obligation to call in each day as scheduled and notify the Carrier of his continuing need to be absent under such circumstances, and he should not be permitted to benefit from his noncompliance with this basic reporting requirement. For each of these reasons, the claim is sustained, in part, as set forth in the Award.

AWARD

The claim is sustained, in part, as follows. The claimant's suspension is modified to a five (5) day suspension. The claimant shall be compensated for all lost wages for the balance of the original suspension. The Carrier is to comply with this Award within thirty (30) days from the date of issuance.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 8th day of May, 1999.