

PUBLIC LAW BOARD NO. 4244

Award No. 239

Case No. 246

Carrier File No. 1499-0055

Organization File No. 140-1311-992.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 February 18, 1999, the Carrier issued a dismissal to Mr. B. L. James for the alleged violation of Rule S-28.14, of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997, as supplemented or amended, in connection with being absent without proper authority on January 11, 12, 13, 14, and 15, 1999, and continuing forward.
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, trackman B. L. James, was assigned to PEB Gang RP-16 at Elephant Butte, New Mexico, on the dates at issue in this case. On January 11, 1999, the claimant's brother, who was also assigned to PEB Gang RP-16, informed roadmaster J. P. Quinn that the claimant was then in jail. As a result of his incarceration, the claimant failed to report for duty on January 11, 1999, as scheduled, and was absent from duty for a total of seven work days. Subsequently, the claimant reported for duty at Rincon, New Mexico on January 20, 1999.

The claimant was instructed 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 January 11, 12, 13, 14 and 15, 1999, forward, while he was assigned as a laborer on PEB Gang RP 16. As a result of the formal investigation conducted on January 28, 1999, the Carrier dismissed the claimant from service for violating Rule S-28.14 of the Safety Rules and General Responsibilities for All Employees. The Board finds that the discipline assessed the claimant by the Carrier in this case was warranted for the following reasons.

The following rule is applicable to the Board's decision in this case. Rule S-28.14 of the Safety Rules and General Responsibilities of All Employees, 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.

Employees must not be absent from duty without proper authority. Except for a scheduled vacation period, authorized absence in excess of ten (10) calendar days must be authorized by formal leave of absence, unless current agreement differs.

The record is clear that the claimant did not report for duty as scheduled on the dates of January 11-15, 1999, because he was incarcerated in a local jail. The record further reveals that the claimant's period of incarceration began on December 5, 1998. During the period of

December 5, 1998, through January 11, 1999, the claimant failed to notify the Carrier that he would be unable to report for his assignment on PEB Gang RP-16 as scheduled. At the investigation, the claimant testified that he attempted to contact the Carrier on one occasion during the period of his incarceration. However, the claimant further stated that the Carrier did not accept his collect telephone call. The Carrier was ultimately notified by the claimant's brother that the claimant would be absent from duty on January 11, 1999, which was the starting date for the claimant's assignment on PEB Gang RP-16.

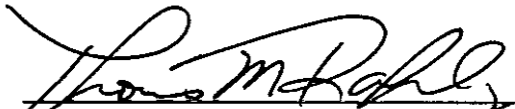
Rule S-28.14 of the Safety Rules and General Responsibilities for All Employees provides that employees must report for duty at the designated time and place with the necessary equipment to perform their duties. The claimant failed to report for duty on January 11, 1999. The Board finds that the claimant did not receive authorization from the Carrier to be absent from duty on the dates at issue in this case. Furthermore, the Board finds that the claimant's incarceration does not excuse him from following the attendance rules set forth by the Carrier. Therefore, the Carrier has satisfied its burden of proof that the claimant violated Rule S- 28.14.

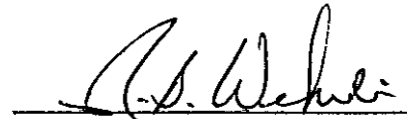
The Board takes notice of the fact that the claimant has received only one prior suspension by the Carrier since 1993. While the claimant may be eligible for reinstatement on a leniency basis, the decision to reinstate in this case rests solely within the discretion of the Carrier. For these reasons, the Board must uphold the claimant's discharge, and deny the claim.

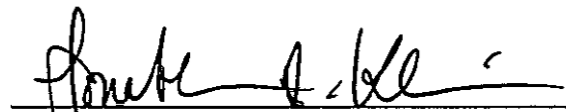
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AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 29th day of June, 1999.