

PUBLIC LAW BOARD NO. 4244

Award No. 244

Case No. 251

Carrier File No. 1499-0077

Organization File No. 190-13D2-994.CLM

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on April 6, 1999, the Carrier issued a Level S suspension of thirty (30) days and removal of foreman rights to Mr. M. V. Furtado, for alleged violation of Rules 1.13 (Reporting and Complying with Instructions) and 1.15 (Duty- Reporting or Absence) of the Maintenance of Way Operating Rules, effective January 31, 1999, in connection with being absent from duty without proper authority on February 10, 1999.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority unimpaired, he shall be paid for all wages lost commencing February 15, 1999, continuing forward and/or otherwise made whole.

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 February 10, 1999, the claimant, foreman M. V. Furtado, was assigned by the Carrier to supervise a tamping gang at Guernsey. At approximately 9:30 - 9:45 a.m. on February 10, 1999, the claimant received an emergency page from his girlfriend. Subsequently, the claimant departed the work site in order to ascertain the nature of this emergency page. However, the claimant failed to notify the Carrier that he was departing the property. At approximately 11:00 a.m. on February 10, 1999, roadmaster John Palacios arrived at the claimant's work site. Roadmaster Palacios was informed by the crew that the claimant had departed due to an emergency. Roadmaster Palacios specifically instructed the claimant's crew to inform the claimant to either call him on his cellular telephone or his pager number. The claimant subsequently returned to the work site in order to return the Carrier's vehicle. At this time, the

claimant was informed by his crew that he was instructed to contact roadmaster. The claimant failed to contact roadmaster Palacios as instructed.

The Carrier instructed the claimant to attend an investigation “ . . . to ascertain the facts and determine responsibility with your alleged failure to properly report time for February 10, 1999, when eight (8) hours straight time and two (2) hours overtime was entered on your time sheet after you allegedly received an emergency page and left the job site to go home; so as to determine facts and place responsibility, if any, involving possible violation of Rules 1.6 (Conduct), 1.13 (Reporting and Complying with Instructions) and 1.15 (Duty- Reporting of Absence) of the Maintenance of Way Operating Rules, effective January 31, 1999.” As a result of the formal investigation conducted on March 11, 1999, the Carrier issued the claimant a thirty-day Level S suspension, and removed his foreman rights for violating Rules 1.13 and 1.15 of the Maintenance of Way Operating Rules (MWOR). Additionally, the claimant was placed on probation by the Carrier for a period of three years.

The following rules of the MWOR are relevant. Rule 1.13 of the MWOR, entitled “Reporting in Compliance with Instructions,” provides as follows: “Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.” Rule 1.15 of the MWOR, entitled “Duty- Reporting of 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.”

The evidence of record is clear that on February 10, 1999, the claimant departed the property prior to the conclusion of his assignment in order to attend to an emergency. The record is also equally clear that the claimant failed to notify the proper Carrier official that he was leaving his assignment. Additionally, the Board finds that the claimant failed to contact roadmaster Palacios, as instructed, after he departed his assignment. At the investigation, the claimant testified that he did attempt to contact roadmaster Palacios, however, the claimant’s attempts were unsuccessful. Based upon these facts and circumstances, the Board finds that the Carrier has satisfied its burden of proof that the claimant violated Rules 1.13 and 1.15 of the MWOR.

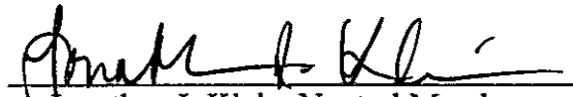
However, the Board finds that the discipline assessed the claimant should be reduced for the following reasons. At the investigation, roadmaster Palacios testified that he would have granted the claimant authorization to depart his assignment under the situation presented. Furthermore, the Board finds that the claimant did make an attempt to contact roadmaster Palacios. Additionally, the Board takes notice of the particular circumstances encountered by the claimant in this case, and the modification of grievant’s prior discipline in Award No. 243 issued by this Board. In light of these facts, the Board determines that the claimant’s discipline shall be reduced, and the claim is sustained, in part, as set forth in the Award.

AWARD

The claim is sustained, in part, as follows. The claimant's thirty-day suspension is hereby reduced to a twenty-day suspension. The Carrier shall comply with the terms of 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 9th day of June, 1999.