

$$\underline{\underline{=}}$$

—
—
—
—

(
(
(
(
(
(
(
(
(
(
(
(

— —

—

1. That the Carrier's decision to issue a Level 1 Formal Reprimand with a probationary period of one year was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 9:00 a.m. on August 13, 1999 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

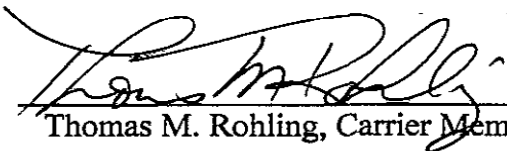
The claimant, foreman Juan P. Aguilar, was assigned by the Carrier to the position of project foreman for gang number 23951. On July 19, 1999, the claimant telephoned assistant roadmaster John Stoppolecamp and informed him that he arrived at Castle Rock, Colorado approximately fifteen minutes after his on duty time of 7:00 a.m. The claimant alleged that he was delayed on this particular morning due to difficulties with his automobile.

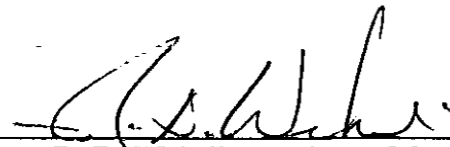
The Carrier instructed the claimant to attend an investigation for the purpose of determining his responsibility, if any, in connection with his alleged failure to report for duty at 7:00 a.m. on July 19, 1999. As a result of the formal investigation conducted on August 13, 1999, the Carrier issued the claimant a Level-1 Formal Reprimand for violating Rule 1.15 of the Maintenance of Way of Operating Rules (MWOR). The Board finds that the Carrier has satisfied its burden of proof that the claimant violated Rule 1.15 of the MWOR for the following reasons.

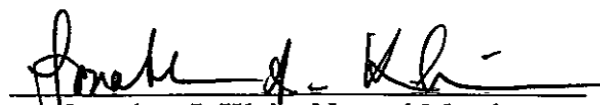
The record is clear that the claimant failed to report for duty at the designated time of 7:00 a.m. on July 19, 1999. At the investigation, the claimant admitted that he arrived for duty at Castle Rock, Colorado approximately fifteen minutes late on the date at issue. Rule 1.15 of the MWOR entitled "Duty- 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." Based upon the facts presented, the Board concludes that the claimant violated Rule 1.15 of the MWOR on July 19, 1999, when he failed to report for duty at the designated time. The Board also notes that the claimant had previously received a memorandum from the Carrier on July 13, 1999, which instructed him to report for duty on time. For each of these reasons, 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 4th day of February, 2000.