

PUBLIC LAW BOARD NO. 4244

Award No. 260

Case No. 267

Carrier File No. 14-00-0085

Organization File No. 240-13A1-002.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 April 4, 2000, Mr. John D. Lente was dismissed from service for alleged violation of 1.15 of the Maintenance of Way Operating Rules, effective January 31, 1999, as amended and/or supplemented, in connection with his allegedly being absent without authority on March 20, 21 and 22, 2000.
2. As a consequence of the Carrier's violation referred to above, Mr. Lente shall be reinstated with seniority, vacation, all other rights unimpaired, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

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

During the period in question, the claimant, J. D. Lente, was assigned to Gang TP-92 as a machine operator. For a three day period, March 20 - 22, 2000, the Carrier asserts that the claimant was absent from duty without authority. The Carrier instructed the claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his absences on the aforementioned dates. As a result of the formal investigation which was conducted in the claimant's absence on April 5, 2000, the Carrier dismissed the claimant from service for violating Rule 1.15 of the Maintenance of Way Operating Rules (MWOR). For the following reasons, the Board finds that the Carrier

has satisfied its burden of proof that the claimant violated Rule 1.15 of the MWOR, and the penalty assessed was neither arbitrary nor capricious.

The record clearly establishes that the claimant was absent from duty on March 20 - 22, 2000. In fact, the evidence reveals that as of the date of the formal investigation, April 5, 2000, the claimant had still not reported for duty as scheduled. At the investigation, the claimant's supervisor, foreman L. A. McClure, testified that the claimant did not have authority to be absent from duty on the dates in question. 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 record, the Board finds that the claimant violated Rule 1.15 of the MWOR when he failed to report for duty at the designated time and place.

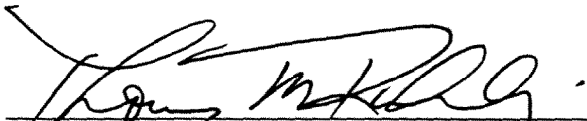
The Organization contends that the Carrier failed to notify the claimant of the investigation and violated Rule 13 and Appendix 11 of the Agreement. The Board finds that Appendix 11 is inapplicable to the instant claim for the reason that the claimant was not charged with being absent from duty without authority for more than five consecutive work days.

Finally, the Board notes that the claimant's dismissal by the Carrier was warranted under the facts and circumstances presented due to his history of absences without the proper authority.

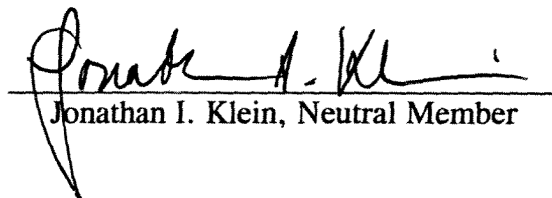
Accordingly, the claim must be denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 6th day of August, 2001.