

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 10

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

Carrier's decision to dismiss Central Region Maintenance of Way employee J. R. Duran, effective January 24, 1996 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from January 24, 1996. (03-13-AA/40-13A1-9533)

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant, with a seniority date of July 18, 1994, was absent without authority on five consecutive workdays, November 27 through December 1, 1995.

An Investigation was finally set for 1 PM, January 10, 1996. Claimant was not present at 1 PM, so the parties proceeded in his absence. The Investigation was concluded at 1315 hours. At 1330 hours, Claimant arrived on the scene, whereby Carrier reconvened the Investigation. The Carrier played the tape of the Investigation just concluded for the benefit of Claimant, who admitted that the testimony of the Carrier witness was correct, and that he was off without authorization November 27 through December 1, 1995. He did not deny that his absences were alcohol related.

When an employee is absent without authorization for five consecutive workdays, the

employee's seniority is terminated, but he has the right to request an Investigation. The intent of the Investigation is to allow the employee the opportunity to offer reasons that would mitigate the termination. Claimant had nothing to offer and, in fact, admitted he was off five successive workdays without authorization.


The Agreement Rule clearly spells out the consequences of being absent five consecutive workdays without authority. This Board cannot, in any way, modify the terms of the Agreement Rule.

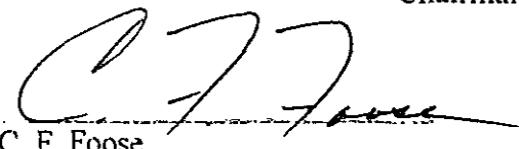
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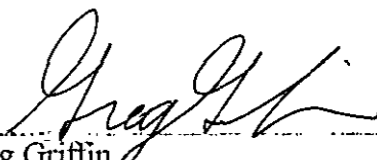
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks
Chairman and Neutral Member


C. F. Foose
Labor Member


Greg Griffin
Carrier Member

Dated 8/19/96