

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 110

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on June 19, 1998, the Carrier issued a Dismissal to Mr. B. James for the alleged violation of Rule 1.15 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged being absent without proper authority from System Gang RP-18 from May 20, 1998 through May 29, 1998.
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.

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 in this case is the same Claimant as in Case No. 109. In Case No. 109, Claimant was found culpable for the charge of being absent without authority from April 27 through May 8, 1998, and on May 22, 1998, Claimant was assessed a 20 day actual suspension from service that was to commence on June 1, 1998.

In this dispute, Claimant was cited on May 22, 1998, as being absent without authority commencing May 20, 1998, and continuing. An Investigation was scheduled for June 2, 1998, and following same, Claimant was dismissed from service in all categories. Claimant, again, opted to ignore the Investigation which was held in his absence and at his peril.

The Carrier presented documentation showing Claimant in jail and, as has been well

established by this Board, being in jail is not an authorized absence.

The discipline of dismissal will not be disturbed. From the evidence adduced by the Carrier and in view of Claimant's record, dismissal is not unduly harsh nor an abuse of Carrier's authority.

AWARD

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 & Neutral Member



Rick B. Wehri, Labor Member



Thomas M. Rohling, Carrier Member

Dated: 6/28/99