

PUBLIC LAW BOARD NO 5850

**Award No.
Case No. 132**

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 29, 1999, the Carrier issued a dismissal from employment to Mr. T.A. Robertson for the alleged violation of Rule 1.15, Maintenance of Way Operating Rules, effective January 31, 1999, in connection with his alleged absence without proper authority on May 17, 1999.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority, vacation, all rights unimpaired and compensated for all wage loss and/or (sic) otherwise made whole beginning June 15, 1999, continuing forward.

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 commenced service April 22, 1996. On April 8, 1999, he was absent without authority. He waived his rights to a hearing, accepted a 30 day suspension that was, in accordance with the discipline letter, to commence April 17 with the advice that he would, "be reinstated to service on May 17, 1999."

Suffice to say, Claimant did not report for work on the 17th. When he reported on the 18th, he was suspended from service pending the results of an investigation, following which he was dismissed from service.

A review of the transcript reveals that Claimant did, on the 14th in the afternoon, contact the Assignment Clerk and exercised seniority to the position he held when he was suspended. However, he advised the Assignment Clerk that he could not work on the 17th as he had to be in court on that date. He would be taking a floating vacation day.

Claimant admitted that he knew the Assignment Clerk had no authority to mark anyone off, and he also admitted that if he had a need to be off he had to contact his Supervisor and get his permission.

Claimant's record since his hire date of April, 1996, is far from good. This is his fourth disciplinary action for being absent without authority, and perhaps the dismissal should be sanctioned by this Board, but it is known that Carrier is experiencing a shortage of Foremen, and since his hiring date he committed only one violation that was directly related with his work. This Board will reinstate Claimant's full seniority rights and return him to service, but with no pay for time lost. This is done on a last chance basis. One more incident of absence without authority could in all probability lead to a permanent separation from Carrier's service.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

Robert L. Hicks
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli
Rick B. Wehrli, Labor Member

Thomas M. Rohling
Thomas M. Rohling, Carrier Member

Dated: December 27, 1959