

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 May 22, 2000, Mr. O. Escalante was dismissed from service for allegedly violating Rules 1.13 and 1.15 of the Carrier's Maintenance of Way Operating Rules, effective January 31, 1999, as amended, and the Letter of Understanding dated July 13, 1976 in connection with his allegedly being absent without proper authority for more than five days beginning on March 13, 2000.
2. As a consequence of the Carrier's violation referred to above, Mr. Escalante 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.

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.

The Rule is clear. If an employee is off more than five consecutive work days without proper authority, his seniority and employment with the Carrier are terminated by a letter.

Any employee receiving such a letter can, if he so desires, request a hearing, if the request is within 20 days of the termination letter.

Claimant did request a hearing, but he did not attend. During the hearing, the Carrier presented its evidence and concluded that Claimant's seniority and employment with the Carrier were properly terminated.

Claimant's representative requested a postponement so Claimant could attend as Claimant was in the county jail.

Being in jail is not a good and sufficient reason for being absent, nor for requesting a postponement.

Carrier's actions in terminating Claimant were consistent with the Letter of Understanding of 1976.

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. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: Feb. 27, 2001