

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 19

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

STATEMENT OF CLAIM.

Carrier's decision to dismiss Eastern Region Maintenance of Way employee D. W. Irvin, effective May 9, 1995 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 May 9, 1995. (95-11-105/50-13A1-951)

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.

On April 3, 1995, Carrier directed the following letter to the Claimant:

"...This is to advise you that, effective April 3, 1995, your seniority and employment with the Santa Fe Railway company is hereby terminated pursuant to the provisions of Letter of Understanding dated July 13, 1976 for being absent without proper authority for more than five (5) consecutive work days beginning March 13, 1995 forward.

If you dispute the action taken hereinabove, you may, if you desire, request to be given an investigation under the provisions of Rule 13 of the current agreement. Such request for investigation must be made to this office at the address noted below within twenty (20) days from the date of this notice...

If no request for investigation is received in my office within the twenty day period, the matter of your employment termination will be considered closed...."

Claimant responded to the termination letter requesting an Investigation, which was held May 1, 1995.

Following the Investigation, Carrier reaffirmed its decision to terminate Claimant's seniority and employment

Rule 22(b) reads as follows.

"Absence due to Sickness or Injury. In case of absence due to sickness or injury the following shall apply.

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(2) When the expected absence is to exceed ten (10) calendar days, the employe must present a doctor's recommendation to his supervisor within the initial ten (10) calendar day period, to avoid being absent without authority...."

Appendix No. 11 provides that an employee absent more than five consecutive work days without authority will have his seniority and employment terminated.

Testimony of Claimant at the Investigation established that at no time from May 13 through April 3 did he furnish Carrier a doctor's statement attesting to his illness.

Combining Rule 22(b) (2) with Appendix No. 11, it is clear that although Claimant may very well have been ill, he failed to discharge his obligation under Rule 22(b) (2), and in accordance with the provision of Appendix No. 11, Carrier's termination of Claimant's seniority and employment was proper.

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*

Robert L. Hicks  
Chairman & Neutral Member

*Greg Griffin*

Greg Griffin  
Carrier Member

C. F. Foose  
Labor Member

Dated 1/13/97