

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 2

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

Carrier's decision to remove former Western Region District 1 Trackman D. K. Howard from service, effective June 14, 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 June 14, 1995.

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 June 16, 1995, Claimant was served with the following notice of a formal Investigation to be held on June 28, 1995, account:

"...you were allegedly absent without proper authority on June 2 and June 7, 1995 and allegedly engaged in horseplay on June 6, 1995 while working with the Edwards Section on the Mojave Subdivision...."

The Investigation was held as scheduled on July 24, 1995, and Claimant was advised he was dismissed from service.

After reviewing the Investigation and the on-property handling, it is this Board's opinion that the dismissal stands.

Claimant faced two charges, being absent without proper authority on two specific dates and for engaging in "horseplay."

Regarding the absences, Claimant had just completed a ten working day suspension for being absent without proper authority; however, there exists a great deal of confusion as to when the ten working day began and when was the first day he was expected to return. The notice of suspension simply read that Claimant was being suspended for ten days. It did not differentiate between calendar days or working days. It did not advise of a starting date, nor did it stipulate a return to work date. Even the testimony as to when the suspension began was conflicting. Under the circumstances, Claimant cannot be held responsible for not working June 2, 1995, but June 7, 1995 is another story. Claimant's alibi was that his car wasn't working, and that he had overslept.

Carrier clearly established Claimant's culpability for being absent without proper authority on June 7, 1995.

Regarding the charge of indulging in "horseplay" on June 6, 1995, there is no need for Carrier to establish the bonafides of that charge as Claimant readily admitted his act.

"Horseplay" is a descriptive noun subject to many interpretations, and this Board will not reiterate the act that is beyond gross that Claimant perpetrated. Suffice to say, Claimant's

actions are unacceptable; even apologies do not lessen the grossness of the act.

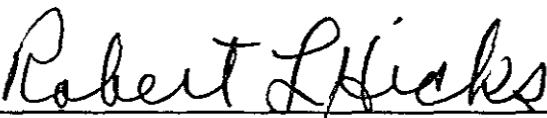
The discipline of dismissal stands. The Organization's request to the contrary is denied.

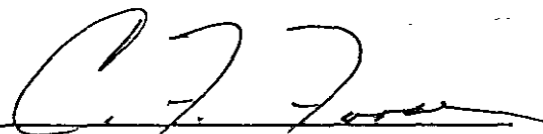
AWARD

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, Arbitrator


C. F. Foose
Labor Member


Greg Griffin
Carrier Member

Dated 5-10-96