

PUBLIC LAW BOARD NO 5850

Award No.
Case No 20

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

STATEMENT OF CLAIM

Carrier's decision to dismiss Central Region Maintenance of Way employee S Trujillo, effective September 25, 1996 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 September 25, 1996. (95-11-151/150-13A1-9523)

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.

Pursuant to Appendix No. 11, Claimant received a letter dated August 8, 1995, from Carrier terminating his seniority and employment effective August 1, 1995, for being absent in excess of five consecutive work days without authority

Claimant requested an Investigation timely, following which the Carrier reaffirmed its decision to terminate Claimant's seniority and employment.

On June 7, 1995, Claimant furnished a statement from his doctor that stated, "...Off work until further notice due to lumbar spine injury. Consultation and treatment in progress..."

Carrier responded granting a leave of absence until July 22, 1995, but in that letter, Carrier

also advised Claimant of his obligation to submit to his supervisor his physician's recommendation for an extension prior to the expiration of the leave.

Claimant did not provide the necessary documentation, thus Carrier's letter of August 8.

This Board, however, finds that the Carrier's letter of August 8, terminating Claimant's seniority and employment effective August 1, 1995, was in conflict with Rule 22(b)(2) and Appendix No. 11.

The Carrier knew full well Claimant was off injured. They knew he was under doctor's care. The Carrier does have a right to control the leave of absences, and can rightfully insist upon periodic updates of the employee's condition, but before Claimant in this instance could be considered off without authority in excess of five consecutive work days, Rule 22(b)(2) allows an employee off because of an injury or an illness ten consecutive calendar days to provide a statement from his doctor certifying the illness or injury claim before the time off is considered unauthorized. August 1 was the tenth day. The termination should have been effective after August 1, not on or before. Granted, Claimant did not comply with the instructions in the letter of June 13, 1995, but he was not charged with failure to follow instructions.

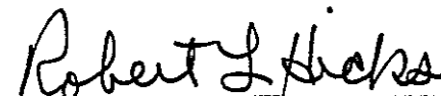
Under the circumstances in this particular case, and restricted solely to this case, Claimant's seniority and employment rights are reinstated as they existed prior to August 1, 1995, but there is no pay for time lost as Claimant's apparent physical condition at the time of the Investigation would preclude employment.

AWARD

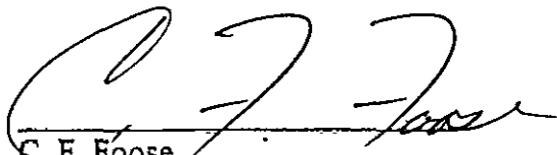
Claim sustained in accordance with the Findings.

ORDER

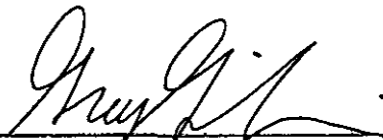
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Robert I. Hicks
Chairman & Neutral Member



C. F. Foose
Labor Member



Greg Griffin
Carrier Member

Dated 1/13/97