

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 22

PARTIES TO DISPUTE

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

Carrier's decision to dismiss Central Region Maintenance of Way employee W. Tso, effective December 11, 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 December 11, 1995. (01-08-AD/240-13A1-9527)

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 October 3, 1995, the Carrier directed the following letter to the Claimant

"...This is to advise you that, effective September 26, 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 September 18, 19, 20, 21, 22 and 25 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 timely requested the Investigation, following which the Carrier reaffirmed its decision to terminate

Claimant contends that he was upset with the way the Foreman talked to him and left the property to look for the Foreman's Supervisor to report the Foreman, but was unable to make contact.

The Foreman's Supervisor testified that Claimant did leave a voice mail request for a meeting, but they were unable to connect

The Supervisor, who Claimant contends he was seeking to report the Foreman's alleged conduct, testified he was on the property overseeing the gang and could have been contacted there, but Claimant, after the 15th of September when he had the meeting with the Foreman, did not reappear at the work site.

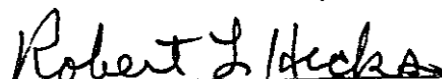
Unrebutted testimony given during the Investigation clearly shows that Claimant was not authorized to be off on the days charged in his letter of termination. Thus, this Board will not interfere with Carrier's right to discharge its obligation under Appendix No. 11. Claimant's seniority and employment rights have been properly terminated as provided in Appendix No. 11.

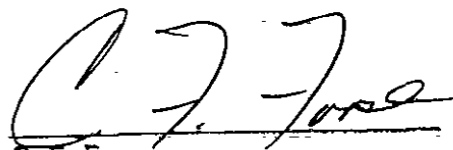
AWARD

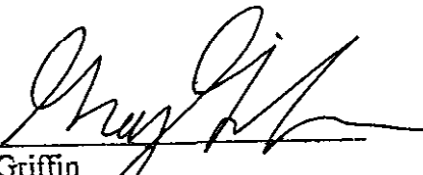
Claim denied

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


C. F. Foose
Labor Member


Greg Griffin
Carrier Member

Dated 1/13/97