PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 245

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on November 6, 2003, when it dismissed the Claimant, Mr. J. L. Thompson, for allegedly violating Letter of Understanding dated July 13, 1976, after he was absent from his job without authority for more than 5 consecutive days beginning August 22, 2003, and continuing.

2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant to service with benefits and seniority unimpaired and make him whole for all wages lost account of this violation. Additionally, the Carrier shall remove any mention of this incident from the Claimant's personal record.

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 Carrier has an Agreement with the Employees that provides for a termination of services when an individual is absent without authority in excess of five working days.

Claimant was scheduled to work commencing August 22, 2003, but did not show, nor did he seek permission from anyone in authority.

A letter of understanding dated July 13, 1976, reads as follows:

"In connection with the application of (Rule 13) of the current Agreement, this will confirm our understanding reached in conference today that, effective October 1, 1976, to terminate the employment of an employee who is absent from duty without authority, the Company shall address, by Registered or Certified Mail, return receipt requested, with copy to the General Chairman, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may, within 20 days of the date of such notice, if he desires, request that he be given an investigation under (Rule 13) the current Agreement.

NOTE: Effective January 1, 1984, the above understanding is to be applied only in cases where the employee is absent from duty without authority more than five (5) consecutive work days."

Claimant timely requested a hearing that was held on October 14, 2003. Claimant was not in attendance at the starting time so the parties decided to wait until 0930 to start. Shortly after 0930, the parties were notified through the General Chairman's office that Claimant was hitch-hiking. The investigation was again recessed until 1113 hours and the parties, having heard nothing further from Claimant, decided to proceed providing what facts were prevalent.

From the evidence presented, it was clearly evident that Claimant was AWOL from August 22 thru September 5 without permission.

The parties again recessed at 1123 hours and reconvened at 1237 hours. Claimant still had not called in, nor was he present, and both parties wrapped up the investigation.

It is clearly evident Claimant was off August 22 thru September 5, 2003, without authority. The Carrier's actions in dismissing Claimant were proper and pursuant to an existing Agreement.

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

William L. Yeck, Carrier Member

Dated: 2/27/04