

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 264**

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

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

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement on January 20, 2004, when it terminated the Claimant, Mr. G. H. Ben's, seniority pursuant to a Letter of Understanding Dated July 13, 1976, for being absent from work without authority for more than 5 consecutive days, January 5-20, 2004; also in violation of Maintenance of Way operating Rules 1.13, and 1.15.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service, remove any mention of this incident from his personal record, and make him whole for all wages beginning January 20, 2004.**

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 an existing Agreement, employees off five consecutive work days without authorization will be terminated. If, however, they disagree with Carrier's decision, that employee can request an investigation if he does so within 20 days of the date of the termination letter. Obviously, Claimant made a timely request.

Claimant was the successful applicant on a gang just starting up when a tragedy

occurred in his family. He made several calls seeking time off because of the family situation. The Roadmaster who could authorize his absence finally agreed to talk to Claimant and listened to Claimant's request for time off. Claimant believed he was refused the time. He then called his Foreman for permission to be allowed to take five days vacation whereupon the Foreman advised he was not authorized to grant such a request.

What is disturbing to this Board is the response of the Roadmaster to Claimant's request to be off. He is quoted as saying, "Do whatever you got to do. (Expletive). I'm not going to deal with you...." That was the response of a harried Supervisor who did not handle the request and in fact did give permission for Claimant to be off when he said, "Do whatever you got to do."

Claimant did do whatever he had to do, and then reported to work only to be told by the Roadmaster he was terminated. There was no advice from the Supervisor to contact the EAP for a leave, no advice to take some vacation, nothing but, "Do whatever you got to do."

The claim will be sustained. Claimant is to be paid for all time lost as provided for in the Agreement, and all traces of this incident are to be removed from his record.

AWARD

Claim sustained.

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 date the award is adopted.

Robert L. Hicks

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli

Rick B. Wehrli, Labor Member

William L. Yeck

William L. Yeck, Carrier Member

Dated: December 10, 2004