

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 31

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level 5 Suspension for System Steel, Extra Gang Trackman Raymond Robinson, from service for one-hundred and twenty (120) days was unjust
2. That the Carrier now rescind their decision and expunge all discipline (Level 5 Suspension), and pay for all wage loss as a result of an Investigation held 9:30 a.m., November 21, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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.

Claimant was charged with being absent without proper authorization on various dates in September, 1996.

After a timely held investigation, Claimant was assessed a 120 calendar day suspension from service.

According to the transcript of the investigation, Claimant's workweek was four 10 hour days with Friday, Saturday and Sunday as rest days. Under the rules, the Carrier does not pay lodging expense for Thursday, Friday nor Saturday (unless Claimant is scheduled to work on his rest days). Therefore, Claimant elected to return home after work on Thursday, intending to return to work the following Monday. Claimant's home was 480 miles from the lodging, and Claimant's transportation was a 1971 Oldsmobile. After he returned home, he experienced car trouble preventing his return on Monday. Claimant has no home phone and the nearest phone was 30 miles away. Claimant found a ride to the phone and tried three separate times to reach the Assistant Foreman at the motel, each time leaving a message. The Assistant Foreman admitted receiving a message from the motel that Claimant did call, and that he had mentioned something about car trouble and that he would call again the next day, but he didn't. There was also testimony from the Foreman that he had no contact with the Claimant, but it was further established the Foreman was living at home, not at the motel, and that he had never advised Claimant of his home phone.

The Board finds that Claimant did not have verbal acknowledgment of his need for time to repair his car sufficiently to sustain the 480 mile trip, but Claimant did make an effort to secure permission, a fact known to Carrier.

Those with the authority to grant permission to be off have to be more readily available to receive such requests. If the Assistant Foreman was difficult to contact because of his work schedule, and the Foreman never advised any of the gang where he could be contacted during off hours, just how does one receive authorization for an absence on relatively short notice?

On the other hand, the Carrier had established a gang with a set number of employees and

would readily expect all assigned would work as assigned, and further, if anyone had a good reason to be off, the Carrier would expect to be notified as soon as possible so that necessary arrangements could be made concerning the vacancy. To not know until starting time as to how many will show for work can cause lost work opportunities for the Carrier.

Under these circumstances, the Board finds that Claimant, who has a little over two years with the Carrier and has a clean record, was derelict in not attempting further contact with the proper authority to insure that he did have authorization to be off, but the Carrier has some responsibility to establish a method of easier contact of those in authority if an employee seeks authorization to be off work.

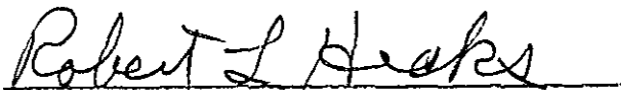
Under these circumstances, it is the Board's opinion that a 120 calendar day suspension was somewhat arbitrary. Thus, the suspension is reduced to a 30 calendar day suspension with Claimant being paid for days lost in excess of thirty as provided in the Schedule Rules.


#### AWARD

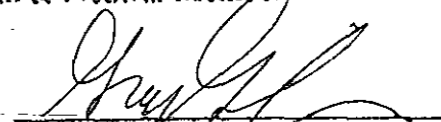
Claim sustained in accordance with the findings.

#### 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 date the award is adopted.

  
Robert L. Hicks, Chairman & Neutral Member

  
C. F. Foote, Labor Member

  
Greg Griffin, Carrier Member

Dated 3/11/97