

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 318**

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 when Claimant, J.D. Campbell was denied seniority and compensation for any and all wages beginning November 1, 2006 due to dismissal for alleged excessive absences. The Claimant allegedly was absent without approval for more than 5 days per Appendix 11, Carrier dismissed the Claimant improperly. The Claimant was granted an unjust treatment hearing per Rule 13, and Carrier did not respond to hearing per Rule 13, and Carrier did not respond to hearing decision timely.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing November 1, 2006.**

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 November 1, 2006, the Carrier wrote Claimant as follows:

"This is to advise you, effective this date your seniority and employment with the BNSF 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 October 2, 2006, and 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) calendar days from the date of this notice."

On November 17, 2006, Claimant's Representative responded as follows:

"The System Committee of the Brotherhood Maintenance of Way Employees Division, on behalf of Joe D. Campbell (EID# 7439821) respectfully request, pursuant to the provisions of Rule 13(l) of the Agreement, an unjust treatment hearing. Mr. Campbell was dismissed from service from the Carrier, by letter dated November 1, 2006, as a result of being absent without authority for more than five (5) consecutive work days beginning October 2, 2006.

Please contact our office so that a mutual time and date can be arranged for this hearing."

After several mutually agreed to postponements, the hearing was held on January 30, 2007.

Rule 13(l) reads as follows:

13(l) - Unjust Treatment. An employee who feels he has been unjustly treated may request a conference through his General Chairman. The request must be submitted to the Division Superintendent in writing by his General Chairman within twenty (20) days of the cause of complaint and must set forth the details for the complaint. During the conference the employee may be assisted by his duly accredited representative, at which time an effort will be made to dispose of the complaint based upon the facts and arguments presented. If the complaint is left unresolved, it may be handled as a claim or grievance under the provisions of Rule 14."

Rule 14 is the Time Limit on Claims Rule.

The Carrier, after the unjust treatment hearing, issued no decision as to the credibility of Claimant's reasons for being absent without authority (to which he admitted to in the hearing).

The Organization cited Rule 13(a) as being violated, however, that portion of Rule

13 pertains to other than an unjust treatment hearing.

This Board does not encourage the Carrier to not respond to unjust treatment hearings. A simple response would suffice and would eliminate extra handling and arguments that are now present in this case.

Under Rule 14, the claim must be filed within 60 days from the date of occurrence. If no response is furnished following the unjust treatment hearing, then when would the time limits begin for claim handling, at 60 days, 90 days or 180 days from the date of the hearing, or is the date of the hearing the start of the claim and within 60 days thereafter the claim must be filed? The right to terminate if an unauthorized absence is in excess of five consecutive work days is a good rule that protects both sides of the table.

In this instance, the claim was timely filed. The matter of not furnishing a copy of the transcript to the Organization is not a part of the unjust treatment outlined in 13(i) but again, to not furnish a copy only adds to the arguments and can add pages to a matter that is simple. Claimant was off in excess of five consecutive working days and readily admitted he never sought authorization. It should be a cut and dried case.

This Board does find that the Carrier's handling of this matter is somewhat arbitrary but not in violation of any Agreement Rule.

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
Robert L. Hicks, Chairman & Neutral Member

David D. Tanner
David D. Tanner, For the Employees
Dated: August 25 2008

Samantha Rogers
Samantha Rogers, For the Carrier