

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 320**

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.A. McLellan (1495860) was dismissed for absent without proper for more than five (5) consecutive work days. The Carrier failed to recognize the extreme circumstances of the Claimant's personal life. This is extreme, unwarranted and unjustified punishment and a flagrant abuse of Carrier rules. The Claimant should be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing October 12, 2007, continuing forward/or otherwise made whole.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline record and make Claimant whole for all time lost.

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 absent from work commencing September 26, 2007, and forward for nine consecutive workdays.

Pursuant to an Agreement, employees on unauthorized absences for more than five consecutive workdays are advised they are terminated from service. If the employee

wishes to dispute Carrier's findings or wants to present a valid reason as to why he was absent, they do have the right to request a hearing (which actually is an unjust treatment hearing) if the request is made within 20 days of the date of the termination letter.

This was done. At the investigation, Claimant set forth his reason for being unable to contact his Foreman or the office of manpower. He had the phone number but he could not get to a phone, and in fact, could not leave the house.

In unjust treatment hearings, the burden of proof shifts from the shoulder of the Carrier to the shoulder of the Claimant.

Claimant presents a rather unusual reason why he was unable to contact anyone of the Carrier to seek authorization to be off. However, the basics of this incident are clearly defined by Claimant himself. The Agreement is clear. The termination from service is in accordance with an Agreement that exists on this Carrier with this Organization. The Board cannot grant leniency or reduce the termination.


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


David D. Tanner, For the Employees
Dated: August 27, 2008


Samantha Rogers, For the Carrier