

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 34

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 remove Western, Steve Myers from service was unjust.
2. That the Carrier now reinstate Claimant Myers with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 9:00 a.m. February 11, 1997 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 Claimant violated the rules enumerated in the decision, removal 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, subsequent to an Investigation, was found guilty of the following charge:

"...your failure to comply with written instructions issued in General Roadmaster...letter of April 29, 1996...."

For the above reason, Claimant was "dismissed from employment for violation of Rules 1.6 and 1.13 of the Safety Rules and General Responsibilities For All Employees...."

From the record it developed that Claimant, following a 90 day suspension, was also obligated to work with a Carrier counselor before he could return to service.

Whether he did or did not work with the counselor is an unknown, but subsequent to the expiration of the 90 day suspension, Claimant commenced a series of calls to various departments of the Carrier, leaving a slew of voice mail messages that bordered on harassment. The letter of April 29, 1996, was issued to Claimant instructing him to cease and desist such calls to all but the counselor, and the only message he was to relay to the counselor was where and at what number he could be contacted. Suffice to say, Claimant did not discontinue the calls. Carrier had a list of such calls typed and presented as evidence at the Investigation.

Despite the fact that Carrier sent the notice of charges to two addresses (one, the last recorded address of record, and the second, to an address Claimant left on the voice mail), Claimant was not in attendance at the Investigation. His Representative did all he could do to protect Claimant's interests, but without Claimant's presence there was only so much he could do.

The evidence was overwhelming. The charge of failure to follow instructions was clearly established by substantial evidence. The discipline of dismissal will stand. The claim is declined.

#### 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

C. F. Foose

C. F. Foose, Labor Member

Greg Griffin

Greg Griffin, Carrier Member

Dated June 9, 1997

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