

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 37

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

STATEMENT OF CLAIM:

Carrier's decision to dismiss System Steel Bridge Mechanic M.D. Ralston, effective June 18, 1996 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from June 18, 1996. (08-23-AA/20-1311-963)

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 assigned to and worked as a member of a steel bridge gang. In the fall of 1991, Claimant suffered a lower back strain that apparently grew progressively worse, so that in 1994, an Orthopaedic Doctor placed weight restrictions on Claimant.

Claimant's Supervisors in 1994, were advised of his weight restrictions, but in 1996, the Supervisors changed. They claimed they were unable to find anything in Claimant's file relative to these restrictions, and thus pressured Claimant to furnish evidence of these restrictions. According to the file, Carrier attempted for six months to secure from Claimant a medical statement of his condition, his prognosis, and the restrictions, if any. At first, the Carrier's approach was casual, indicating a need for such information, and then as it was not forthcoming, they gave Claimant an

ultimatum. Either he would furnish the required medical information by a certain date, or face the consequences.

Claimant was working 1,800 miles from home for eight consecutive days, then having six days off. He finally set up an appointment with his Doctor for May 24, only to find out at the last minute that the appointment for the 24th was canceled by the Doctor, and he was given a new time on June 5. Claimant did not immediately communicate the change in appointments, and upon returning to work on May 31, was suspended from service pending the results of the Investigation. He was subsequently dismissed for failing to comply with instructions.

After reviewing the transcript and the subsequent on-the-property handling, it is this Board's opinion that Claimant should be returned to service with all his seniority intact but without pay for time lost.

This is so because Claimant had a copy of the 1994 letter setting out his restrictions, but did not seriously look for same until after he was suspended. Claimant's approach to this matter has been anything but prompt, and to this Board it appears as though Claimant did not take his Supervisor's request seriously and made no effort to comply until it was too late.

Claimant has been out of service since May 31, 1996. The time he has lost is to serve as a reminder, albeit a somewhat harsh reminder, that when the Carrier makes a request or issues instructions, they are to be complied with promptly.

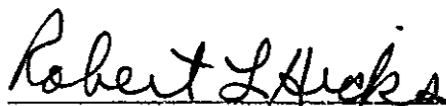
To reiterate, Claimant is to be returned to service with all his seniority rights intact, but without pay for the time he lost.

AWARD

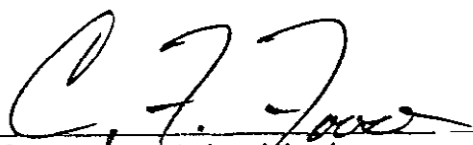
Claim sustained in accordance with the Findings.

ORDER

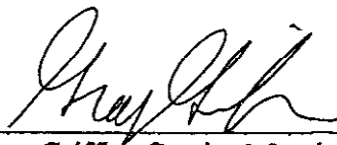
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foose, Labor Member



Greg Griffin, Carrier Member

Dated 7/1/97