

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 38

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

STATEMENT OF CLAIM

Carrier's decision to dismiss System Steel Maintenance of Way employee B.D. Gregg, effective August 7, 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 August 7, 1996. (10-04-AA/100-1312-965)

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 July 8, 1996, Carrier directed the following letter to Claimant:

"Arrange to report to Superintendent's Office Conference Room...at 3:00 PM, Monday, August 5, 1996, with your representative and witness(es), if desired, for formal investigation to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.6 and 1.13, Safety and General Responsibilities for All Employees, Effective January 31, 1996, concerning your alleged disruptive behavior, insubordination and failure to follow specific instructions issued by your supervisor during rules class at the Guest House Inn at Temple, Texas, on July 5, 1996."

Claimant did not appear for the Investigation as scheduled as it came to be he was involved in an auto accident on his way to the hearing and did not contact his Supervisor until after the 3:00 PM start time to advise of his predicament.

The Investigation was, with the concurrence of the Organization, rescheduled for August 22,

1996, with the Carrier adding two more charges, i.e.,

"...concerning your alleged failure to attend formal investigation scheduled for 3:00 PM, August 5, 1996, at the Superintendent's Office...and your alleged insubordination and threats made toward...at the Temple Section House at approximately 1200 hours on August 7, 1996...."

Following the August 22 Investigation, the Carrier on August 30, 1996, advised Claimant that as a result of the Investigation he was found culpable of the charges leveled in its August 12, 1996 letter, and he was dismissed from Carrier's service.

The charge of failure to attend a "formal investigation" of and by itself is not a disciplinary matter, generally. The charged employee can opt to attend if he so desires or he can, at his peril, opt not to attend with the Investigation being held in absentia.

The only exception to the above is if the charged employee is instructed to attend as Carrier believes he has testimony vital to a particular incident, such as an accident, an injury, etc., then the charge is insubordination for his failure to attend the Investigation. But such incidents are rare. However, the remaining charges are sufficient to warrant discipline, and in this case, the Carrier did introduce sufficient evidence to establish Claimant's culpability for those charges.

Claimant's contentions to the contrary, Carrier witnesses clearly set forth the behavior of Claimant. He was disruptive during the Rules session, which of and by itself would not be sufficient to sustain the dismissal, but the threats Claimant leveled against the Supervisor and his family is conduct that is intolerable. The Carrier is obligated to provide a safe work place, even to the extent of removing employees from service who threaten others and/or their families. No one is required to work under such conditions.

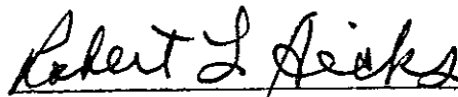
The work of the employees represented by the Organization is strenuous enough without having to constantly be looking over your shoulder. The dismissal stands. The claim is denied.

AWARD

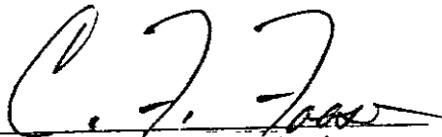
Claim denied.

ORDER

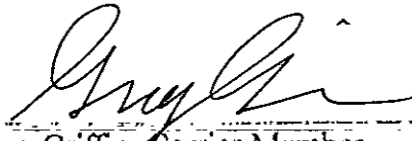
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foose, Labor Member



Greg Griffin, Carrier Member

Dated 7/1/97