

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 39

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE.

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM.

Carrier's decision to dismiss Central Region Machine Operator L.V. Aldaz, effective October 16, 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 October 16, 1996. (11-05-AA/140-13A1-969)

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 advised in a letter dated August 15, 1996, that his seniority and employment were terminated for being off in excess of five consecutive work days as provided for in Appendix No. 11.

Claimant, through his Representative, requested an Investigation which was scheduled for and held on September 27, 1996. For whatever reason, Claimant did not appear, nor did he call anyone in an effort to postpone the Investigation or even to advise why he would not attend.

In his absence, the Investigation was held and Carrier presented irrefutable evidence that Claimant was off in excess of five consecutive work days without authorization. Claimant was so advised of Carrier's findings in a letter dated October 16, 1996.

This Board finds no basis upon which it could possibly overturn or modify Claimant's termination. The Investigation was Claimant's window of opportunity to offer proof of circumstances which could possibly sway the Carrier or this Board's opinion; but for whatever reason, Claimant opted not to appear.

The claim is denied. Claimant's termination is upheld.

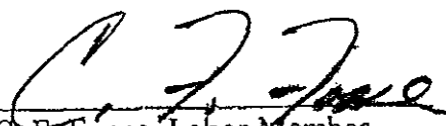
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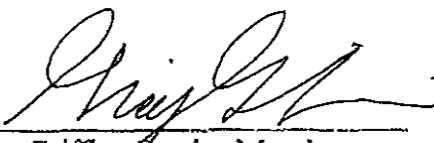
Claim denied.

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. Foote, Labor Member


Greg Griffin, Carrier Member

Dated 7/1/97