

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 41

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 issue a Level S Suspension for Eastern Region, Welder, Fred J. Villa from service for one-hundred and twenty (120) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of an Investigation held 1400 hrs, April 28, 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 the Claimant violated the rules enumerated in the decision, suspension 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.

On March 18, 1997, the Carrier wrote the following letter to the Claimant:

"...Attend investigation...1300 hours on April 15, 1997 for the purpose of ascertaining the facts and determining your responsibility if any with your alleged violation of Rules 1.6, 1.15, 1.19 of the Maintenance of Way Operating Rules effective August 1, 1996 and Care of Property page 239 of Safety Rule and General Responsibilities for all employees effective March 1, 1997, when on March 14, 1997, at approximately 1400 hours you left company property without permission and at

approximately 1530 took company van at 39929 without permission and used the van for personal business until approximately 1830...."

After an agreed to postponement, the Investigation was held on April 28, 1997, following which the Carrier assessed Claimant a 120 day suspension from service.

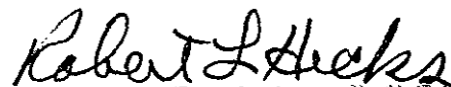
There is no controversy. Claimant admitted fully his culpability for the charges assessed. The discipline was appropriate under the circumstances.

AWARD

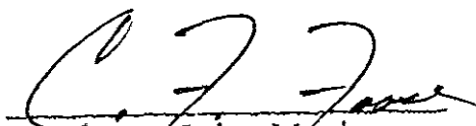
Claim denied.

ORDER

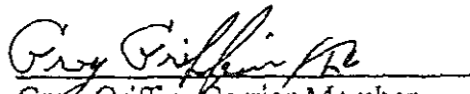
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foose, Labor Member



Greg Griffin, Carrier Member

Dated