

PUBLIC LAW BOARD NO 5850

Award No. .
Case No. 44

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM.

1. That the Carrier's decision to issue a Level 3 Suspension for Central Region, Trackman Paul F. Glasby from service for twenty (20) days was unjust.
2. That the Carrier now rescind their decision and expunge all discipline and transcripts and pay for all wage loss as a result of Investigation held 1:00 p.m., May 8, 1997 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.

Claimant was notified of an Investigation to develop the facts and place responsibility, if any, for his failure to report for duty on March 20, March 24, April 4 and April 10, 1997.

Following the Investigation, the Carrier, in the belief that it had established sufficient evidence of Claimant's culpability for the charges assessed, suspended Claimant from service for 20 calendar days.

Prior to these charges, Claimant had undergone some type of eye surgery, and for six weeks subsequent to the surgery he had follow-up exams on a weekly basis, either on a Tuesday or a Thursday. Claimant stated that he had advised his Foreman in advance of March 20 and April 10 that he had these appointments, but the Foreman testified Claimant did not advise him of his need to be off.

Thus, this Board is confronted with a credibility issue. In this appellant forum, this Board must credit the decision maker unless there is evidence in the record to show that the findings are arbitrary and capricious or that he was substantially prejudiced to Claimant so as to deny him a fair and impartial Investigation as called for in the Rule. There is nothing in this record to establish either of these exceptions, thus this Board defers to the credibility findings of the Investigating Officer who was present to observe the demeanor of the witness and listen to the tenor of his testimony.

Regarding the April 4 absence, there is un rebutted evidence that Claimant did experience a hemorrhaging in the eye that required prompt attention, but Claimant was not sedated and either he or his wife could have at some time during the day, called someone in authority to advise of the need to be off.

This Board has addressed only 3 of the 4 unauthorized absences Claimant was charged with as that is all the absences Carrier listed in its disciplinary letter, but these three unauthorized absences are sufficient to warrant discipline, particularly in view of Claimant's work history of being the subject of an Investigation for leaving work without authorization or being off without authorization on eleven occasions since 1984.

Under the circumstances, the 20 day suspension is more than justified. The claim will be

denied.

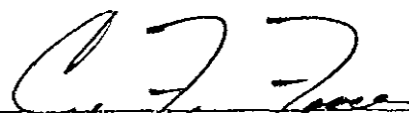
AWARD

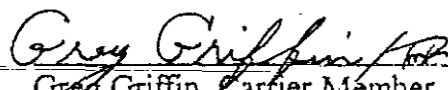
Claim denied.

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