

PUBLIC LAW BOARD NO 5650

Award No.
Case No. 47

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 remove Central Trackman Connie A. Nelson from service was unjust.
2. That the Carrier now reinstate Claimant Nelson with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m. November 13, 1996 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 Claimant violated the rules enumerated in the decision, removal 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 regularly assigned as a Trackman on the Seligman, east section gang.

Claimant did not work on October 8, 9, 10, 11, 12, 14 or 15 of October, 1996.

Pursuant to Appendix No. 11, which reads:

"...In connection with the application of Rule 13 of the current Agreement, this will confirm our understanding and reason of conference today, that effective October 1, 1976, to determine if the employment of an employee who is absent from duty without authority, the Company shall address such employee in writing in his last known address, by Registered or Certified Mail, return/receipt requested, with copy to the general chairman, notifying him that his seniority and employment have been terminated due to his being absent without proper authority, and that he may, within 20 days of the date of such notice, if he so desires, request he be given an investigation under Rule 13 of the current Agreement.

Note, effective January 1, 1984: The above understanding is to be applied only in cases where the employee is absent from duty without authority for more than five consecutive workdays...."

the Carrier did, on October 16, 1996, direct the following letter to Claimant.

"...This is to advise you that, effective October 16, 1996, your seniority and employment with the Burlington Northern Santa Fe Railway Company is hereby terminated pursuant to the provisions of Letter of Understanding dated July 13, 1976 for being absent without proper authority for more than five (5) consecutive work days beginning October 8, 9, 10, 11, 14 and 15 forward.

If you dispute the action taken hereinabove, you may, if you desire, request to be given an investigation under the provisions of Rule 13 of the current agreement. Such request for investigation must be made to this office at the address noted below within twenty (20) days from the date of this notice.

If no request for investigation is received in my office within the twenty day period, the matter of your employment termination will be considered closed."

During the investigation, requested by Claimant, in response to the question, "Did you have permission to be absent on these days?" Claimant responded, "No, I didn't."

Further testimony developed he was in jail on the days he was absent. When Claimant talked to the Roadmaster, he said he was in jail and the Roadmaster advised Claimant that, "Well, we can't excuse your absence for being in jail."

Without a doubt, Claimant was off in excess of five consecutive work days without authority, and the Carrier has, pursuant to Appendix No. 11, correctly terminated his seniority and employment.

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

Robert L. Hicks, Chairman & Neutral Member

C. F. Foose

C. F. Foose, Labor Member

Thomas M. Rohling

Thomas M. Rohling, Carrier Member

Dated: