

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 74

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 1 Formal Reprimand for Central Region, William F. Folmer was unjust.
2. That the Carrier now rescinds their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 1:00 p.m. March 17, 1998 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, a Level 1 Formal Reprimand 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 incurred a back injury in August, 1996.

The Carrier and Claimant's personal physician concurred that Claimant's treatment should focus on psychological treatment with the recommendation that he contact the local EAP counselor.

As a result of the recommendation, Claimant was instructed to contact the EAP counselor within 30 days from the date of the notice. Claimant was cautioned that his failure to comply would lead to a formal investigation.

Claimant did not comply and his reason for not doing so was that the FELA statute allowed him to seek medical services on his own.

The Board does not quarrel with the tenants of FELA, but when both his own physician and Carrier's physician advise that Claimant should seek psychological treatment, and Claimant is so ordered, it was in his own best interest to comply.

Claimant had no valid reason for refusing to follow the instructions of his Supervisor under the circumstances evident in this dispute. A record mark for his failure to follow instructions is not out of line.

AWARD

Claim denied.

ORDER

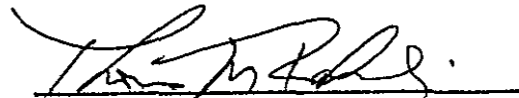
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: June 12, 1998