

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier dismissal of Mr. R.L. Draper from service for alleged misappropriation of Burlington Northern Santa Fe Railway property and alleged violation of Carrier Safety Rules S-28.6 and S-28.24 violated Rule 13 and Appendix No. 11 of the current Agreement.
2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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's notice of pending Investigation reads, in pertinent part:

"...concerning your alleged misappropriation of Burlington Northern Santa Fe Property...."

When the Investigation started, Claimant was not in attendance although he received each notice, nor is there evidence of Claimant attempting to seek a postponement, nor is there any evidence that he even called in with an excuse as to why he could not attend.

The Investigation was held without Claimant as it is the charged employee's (in the vast majority of cases) option whether to attend or avoid the Investigation. However, when the employee opts not to attend, he does so at his peril as there is no one present to refute Carrier's evidence.

In this case, the evidence was overwhelming. It assuredly met the substantial evidence criteria necessary to sustain the charges assessed.

AWARD

Claim denied.

ORDER

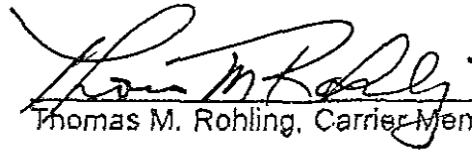
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehri, Labor Member



Thomas M. Rohling, Carrier Member

Dated: 10/7/98