

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 94

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 2 Suspension for ten (10) days from service 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 an investigation held 8:00 a.m. September 16, 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, 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 charged with failing to report for duty on August 31, 1998. Following the investigation, Claimant was assessed a ten day suspension.

A review of the transcript reveals that Claimant candidly stated he did not report for work on August 31, nor did he inform any Supervisor that he could not or would not be at work. His only defense was that after driving 1100 miles and not arriving at the motel until 12:30 AM, he was too tired to go to work.

The Board finds there is no controversy. His alibi of why he did not work is not of sufficient worth to sway this Board to reduce the discipline assessed. It is as though Claimant determined upon his arrival at the motel that he would be too tired in the AM to work. It is further evident by Claimant's negligence in failing to notify either of his Supervisors, that Claimant is not impressed with the necessity to do so.

Discipline is assessed for two reasons. One is an effort to impress Claimant with the need to comply with the rules. If he fails to understand that need, the discipline for relatively minor infractions is increased until the individual could face the ultimate - dismissal in all categories, for an offense that would, perhaps, warrant only a reprimand in the first instance. Claimant has already been assessed a formal reprimand for relatively the same issue as here concerned.

The discipline is appropriate under the circumstances.


AWARD

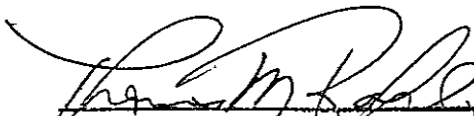
Claim denied.

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


Rick E. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: February 10, 1999