

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 98

PARTIES TO DISPUTE:  
(Brotherhood of Maintenance of Way Employees  
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on June 16, 1998, the Carrier dismissed Mr. S.R. Kee pursuant to the provisions of the Letter of Understanding dated July 13, 1976, for being absent without proper authority for more than five (5) consecutive work days beginning April 24, 1998, and continuing forward.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority 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.

On June 16, 1998, the Carrier advised Claimant as follows:

"...This is to advise that, effective this date, June 16, 1998, 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 April 24, 1998 and 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 20 day period, the matter of your employment termination will be considered closed...."

Claimant timely requested the investigation, then failed to show. He advised neither the Carrier nor his Representative that he would not be in attendance.

After waiting about an hour, the Carrier started the investigation and concluded same without Claimant being in attendance.

When Claimant was notified of Carrier's intent to terminate for unauthorized absences and then requested an investigation, the burden of proof shifts from the Carrier to the employee to establish the bona fides of his position: that he did notify someone in authority or that he may have been prevented from doing so because of an incapacitating injury or illness.

When Claimant failed to advise either the Carrier or his representative to ask for an extension and failed to appear, the consequences of his unauthorized absences were reinstated, i.e., his seniority and employment were terminated.

Carrier's claim of being absent in excess of five consecutive work days stands unrefuted.


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: March 26, 1999

APR 12 1999  
Chicago Office - BMW