

**PUBLIC LAW BOARD NO 8103**

**Award No.  
Case No. 18**

**PARTIES TO DISPUTE:**  
(Brotherhood of Maintenance of Way Employees  
(Burlington Northern Santa Fe Railway (former St. Louis-  
(San Francisco Railway Company)

**STATEMENT OF CLAIM:**

1. The Carrier violated the Agreement when on June 2, 1999, Mr. S. S. Sholar was dismissed from service for failing to protect his assignment on June 1 and 2, 1999 without first receiving permission to be absent. Mr. Sholar was reinstated to service on August 6, 1999, thereby reducing the dismissal to a suspension.

2. As a consequence of the Carrier's violation referred to in part (1) above, Mr. Ellis (sic) shall be reinstated with seniority, vacation, all other rights unimpaired, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

**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 occupied a unique position that was entitled Assistant Foreman, but he mainly worked in the Roadmaster's Office answering phones, preparing reports, and completing paper work that is required of a Roadmaster that the Roadmaster did not have time to do himself.

On June 1, 1999, Claimant left a voice mail message at 0808 hours of the reason he was not at work at 0730. On June 2, 1999, he called to leave a phone message of his need for being off and an update on the illness of his parents. Again, on June 3, he called advising of his need to be off, only to be informed by the new Roadmaster who had been assigned to the post

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on May 24, 1999, that he had been removed from service for his failure to properly mark off.

During the investigation, the new Roadmaster stated he had advised everyone that to lay off it was necessary that they advise personally the Assistant Roadmaster or the Roadmaster of their need to be off. That is as prescribed by the Operating Rules applicable to Maintenance of Way Employees. However, during the preceding Roadmaster's reign, it was clear that voice mail would suffice if they were unable to contact him personally and that emergency absences were an exception to the Rule.

Because Claimant left a voice mail at 0808 and did not contact the Roadmaster personally, he was, on June 2, 1999, removed from service and was so advised personally on June 3, 1999.

The claim will be sustained without any editorial comments from this Board.

Basically the permanent separation issued by the new Roadmaster was because Claimant did not contact the Roadmaster personally, yet when queried during the investigation, he readily admitted he would have accepted a voice mail advisory had Claimant called in prior to the starting time of his assignment. (See Question and Answers 76 and 77.) By the accuser's own admission, voice mail notification under the conditions causing Claimant to be absent would have been accepted, yet he was adamant in stating that such notification is in violation of the Rules applicable to the Maintenance of Way Employees.

The new Roadmaster insisted he had advised everybody since his assignment on May 24 of the proper method to be off, yet neither the Assistant Roadmaster nor the lowboy Operator who both testified could not recall being so advised. Also, Claimant, who worked in the office, stated he was unaware of the Roadmaster advising anyone that only personal contact absences would be accepted.

The Rule is as recited by the new Roadmaster, but as clearly established, the

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preceding Roadmaster accepted voice mail lay off. To change a practice, which may be in violation of an existing Rule that had been in effect, proper notification to all concerned of the intent to apply the Rule as written should have been issued and widely circulated. That did not happen in this case.

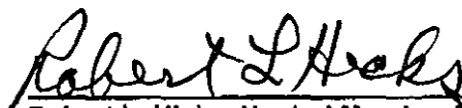
The claim will be sustained. The Carrier has failed to furnish substantial evidence of Claimant's culpability for the charges assessed. Claimant is to be paid for all time lost as provided for in the Schedule Agreement, and all traces of the investigation are to be removed from Claimant's record.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Neutral Member & Chairman  
Public Law Board 6103

Dated: November 14, 2000

