

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

-and-

Burlington Northern-Santa Fe Railway

AWARD NO. 6

CASE NO. 6

STATEMENT OF CLAIM:

Claim that Engineer Stewart be reinstated immediately with seniority unimpaired; paid for all time lost and that the notation relative to this incident be removed from his record.

FINDINGS:

This Public Law Board No. 6284 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By Carrier letter dated May 21, 1999, the Claimant, Engineer Robert Stewart, was notified that he had been found responsible for violating Rule 1.13 as the result of a formal investigation, and he was assessed the discipline of dismissal from service. The May 21, 1999 letter stated as follows:

As a result of the formal investigation held at 1530 Hours, Tuesday, May 4, 1999 and reconvened at 0930 Hours, Wednesday, May 5, 1999, in connection with your alleged failure to comply with instructions from the proper authority, as evidenced by your failure to provide a comprehensive medical report, outlining diagnosis, prognosis, restrictions, if any, and your ability to safely perform your work duties as a Locomotive Engineer to BNSF's Chief Medical Officer no later than 1700 Hours, Friday, April 23, 1999 as instructed by a letter dated April 9, 1999 from C.D. Wright, Director Administration, Nebraska Division, you are dismissed from the employment of the Burlington Northern Santa Fe Railroad effective May 21, 1999, for violation of Burlington North Santa Fe General Code of Operating Rules - Rule 1.13 (Report and Complying With Instructions).

Please arrange to return all Company property and any Amtrak transportation passes in your possession.

Acknowledge receipt of this letter by affixing your signature to the space provided.

s/Gregory G. Golden  
Road Foreman Engines

The discipline was appealed by the Organization and the matter is now properly before this Board for adjudication.

As set forth in Award No. 5 of this Board the Carrier is entitled to be informed about the work status of its employees so that it can effectively manage its workforce. Case No. 5 dealt with Mr. Stewart's failure to comply with the Carrier's "show cause" letter dated March 10, 1999. On March 23, 1999, the record shows that the Carrier's Director of Administration met with Mr. Stewart and the BLE Local Chairman and that Mr. Stewart informed the Carrier that he was currently suffering from a medical condition which precluded him from performing his duties as a Locomotive Engineer. The Director of Administration instructed Mr. Stewart to provide current medical information to the BNSF's Chief Medical Officer in this regard. The Carrier has a clear right to have its Chief Medical Officer have such information. Mr. Stewart did not comply with this request by April 9, 1999. The Director of Administration sent a letter dated April 9, 1999 to Mr. Stewart setting forth in writing what Mr. Stewart needed to do and by what date and giving Mr. Stewart notice that failure to comply could lead to discipline. The Carrier's April 9, 1999 letter stated;

Dear Mr. Stewart:

This letter is being written in regard to your current employment status with BNSF. This letter will confirm the meeting and discussion at the Terminal Superintendent's Conference Room, 153 West 14th Avenue, North Kansas City, Missouri at approximately 1515 Hours on Wednesday, March 23, 1999, involving you, myself, and BLE Local Chairman M.R. Littlejohn. This letter is being written as a supplement to my correspondence dated March 24, 1999.

During the meeting on Wednesday, March 23, 1999, you advised you are currently suffering from a medical condition which prohibits you from marking up, returning to service, and performing your work duties as a Locomotive Engineer. You further advised you are currently under the care of a physician and are taking medication prescribed by your treating physician for your medical condition. On March 23, 1999, you were instructed to provide current medical information to BNSF's Chief Medical Officer. To date, the medical information has not been provided as instructed. You will not be allowed to mark up and return to service until such time as the Chief Medical Officer reviews the requested medical information and authorizes your return to service.

You are instructed to provide a comprehensive medical report, outlining your diagnosis, prognosis, restrictions, if any, and your ability to safely perform your work duties as a Locomotive Engineer to BNSF's Chief Medical Officer. You will not be allowed to markup and return to service until the Chief Medical Officer reviews the requested medical information and authorizes your return. The medical information should be sent to the following address:

Burlington Northern Santa Fe  
Corporate Medical Department  
P.O. Box 961033  
Ft. Worth, TX 76161-0033

You are instructed to provide the requested medical information to the Chief Medical Officer by 1700 Hours, Friday, April 23, 1999.

Failure to comply with the instructions contained in this letter may result in disciplinary action.

Sincerely,

s/G.D. Wright  
Director Administration

We have considered each of the procedural arguments made by the Organization and conclude that a basis does not exist to set aside the discipline based on these contentions.

We find that the Carrier could reasonably conclude on the record before this Board that Mr. Stewart was not in compliance with the April 9, 1999


directive to Mr. Stewart. The Carrier's Medical Officer informed the Director of Administration that his office did not receive the information by the April 23, 1999 deadline. However, the Carrier's Medical Officer did identify that he had received limited medical information from a health care provider faxed on to him on April 29, 1999.

In the context of this record, we find that substantial evidence of record supports the Carrier's determination that Mr. Stewart was in violation of Rule 1.13. In light of the fact that medical information was provided on April 29, 1999 and a treating health care professional was finally identified to work with the Carrier's Medical Officer to enable this Carrier Officer to ascertain Mr. Stewart's work status, we find that the discipline of permanent dismissal is excessive. The discipline assessed is reduced to a 60 day suspension. Mr. Stewart shall be returned to service with all rights unimpaired, subsequent to disciplinary suspension periods, provided he is medically qualified for service.

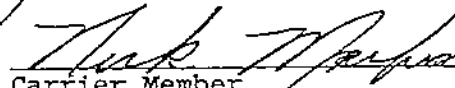
AWARD

As per Findings.

ORDER: The Carrier is required to comply with this award within thirty days.

  
Chairman and Neutral Member

  
Employee Member

  
Carrier Member

Dated: Feb. 26, 2001