

PUBLIC LAW BOARD NO. 4901

**AWARD NO. 167
CASE NO. 167**

**PARTIES TO
THE DISPUTE:**

United Transportation Union
(ATSF Coast Lines)

vs.

Burlington Northern Santa Fe Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: December 20, 2001

STATEMENT OF CLAIM:

"Request in behalf of Barstow Yard Switchman D. S. Loftin for the reinstatement to the service of the Burlington Northern and Santa Fe Railway Coast lines, with seniority and all other rights unimpaired, but on a lenience basis, as a result of the Formal Investigation conducted on January 28, 1998, scheduled formerly for June 12, 1997, and postponed by Superintendent S. A. Treece until such time the Claimant or his Representative advises his office that the Claimant is able to proceed. As a result of the Investigation held on January 28, 1998, concerning the Claimant making himself absent without proper authority beginning May 19, 1997, the Claimant was dismissed from employment for violation of Rules 1.3.1, 1.3.3, and 1.6 of the General Code of Operating Rules Third Edition. The Claimant has now overcome the medical problems he was incurring when dismissed from service and has with the assistance of his beliefs, overcome family problems."

FINDINGS OF THE BOARD:

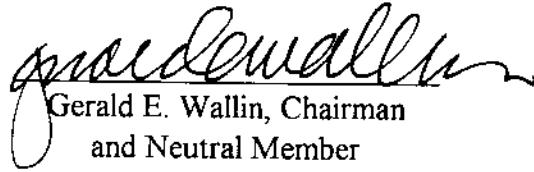
The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

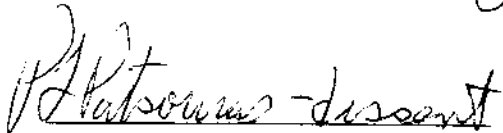
Claimant was dismissed from service for absenting himself from service for an extended period of time with no notice to the Carrier. Although the record alleges a medical problem as a primary reason for the absence, no substantiation of such a problem was provided. Moreover, Carrier's efforts to secure such substantiation for a medical leave of absence were ignored. Finally, Claimant did not attend the investigation held on January 28, 1998 despite a several month postponement as well as having proper notice of the rescheduling.

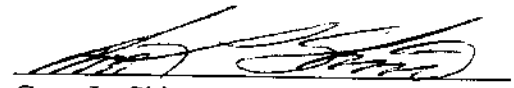
At the time of his dismissal, Claimant had less than one year in Carrier's service. The record contains substantial evidence in support of the charges of rule violation. Under all of the relevant circumstances, the Board does not find that Carrier abused its discretion in refusing to grant Claimant reinstatement to service on a leniency basis.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member