

In the Matter of the Arbitration Between:

**BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY**

NMB Case No. 38
Claim of J. R. Lowden

and

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: The Organization request leniency reinstatement for Joshua R. Lowden, Conductor Trainee on the California Division at Barstow, California, for alleged violation of Rule 1.15 and 1.16 of the General Code of Operating Rules, Fourth Edition, effective April 2, 2000, as amended or supplemented.

FINDINGS OF THE BOARD: Claimant, a Conductor Trainee, was absent without leave from April 28, 2004 through May 14, 2004. It was found that Claimant was out bounded to work on April 27, 2004 on the QLACAUG628 at 2300 with a return trip out of Barstow on the SCHIWAT725A on April 29th at 12:30. Computer records show him out-bound but testimony shows he did not make either side of this round trip. Claimant was incarcerated during this time and made no attempt to contact the Carrier. Claimant was a new employee with a hire date of February 23, 2004.

OPINION OF THE BOARD: Claimant was notified of an investigation concerning an asserted violation of the Carrier's General Code of Operating Rules 1.15 and 1.16.

1.15 Duty - Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.

1.16 Subject to Call

Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them.

At the hearing, Claimant admitted that he was incarcerated and made no attempt to call in to advise the Carrier.

The Organization argues that due to Claimant's situation the discipline that was issued was harsh, arbitrary, and capricious.

The Carrier argues that Claimant is guilty of the charge. It asserts that incarceration is not a valid excuse for being unavailable for service.

FINDINGS: The Board, upon consideration of the record and all of the evidence, finds:

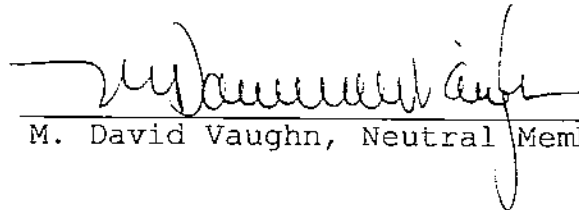
The Parties herein are Carrier and Employee within meaning of the Railway Labor Act as amended.

The Board has jurisdiction over the dispute involved herein.

The Board finds that the Organization's position is without merit.

AWARD: Claim denied.

Executed this 25th day of September 2006.



M. David Vaughn, Neutral Member



Gene L. Shire, Carrier Member



R. L. Marceau, Employee Member