

In the Matter of the Arbitration Between:

**BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY**

and

NMB Case No. 27
Claim of C. J. Hardman
Dismissal: Failure to
Return after Leave of
Absence

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim for reinstatement on behalf of Trainman (Yardman) C. J. Hardman to service with seniority and all other rights unimpaired with pay for all time lost including payment of Health and Welfare Benefits beginning May 14, 2004 and continuing until returned to service and no deductions for outside earnings, account Carrier did not meet their burden of proof.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on March 10, 2006, at Washington, D.C. Claimant was present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts.

Claimant was employed by the Carrier in July of 1997 and remained in its employ until she was dismissed in 2004. Claimant was granted a five month leave of absence for educational purposes, commencing January 30, 2003 and ending July 1, 2003. Claimant's leave was approved conditioned on her return to service at the expiration of the leave period and her acknowledgment that failure to do so would be grounds for dismissal. Claimant did not return from her leave at the time required. She did not communicate with the Carrier during the period of her absence to request an extension of her leave or to explain her absence; and the Carrier never contacted her to advise her that she had overstayed her leave or to request her return to service. Indeed, the Carrier was apparently unaware that Claimant had overstayed her leave until she attempted to mark up for service on May 13, 2004.

The Carrier convened an investigation into Claimant's alleged absence without proper authority on August 10, 2004, at which the evidence described herein was adduced. Claimant was found guilty of violating General Code of Operating Rules (April 2, 2000 edition) 1.4, 1.6, 1.13, 1.15 and 1.16, which require regularity of attendance and compliance with Carrier rules. She was dismissed from service.

The instant claim for Claimant's reinstatement and payment for all time lost, was presented in due course and progressed on the property in the usual manner. Claimant was offered an opportunity to present her case for reinstatement to Management, but she failed to make an appointment to do so. The dispute was unresolved; and it was submitted to this Board for disposition.

POSITIONS OF THE PARTIES: The Carrier argues that the facts clearly establish Claimant asked for a leave of absence which expired July 1, 2003, failed to return by the date clearly specified on the authorization and that she made no attempt to communicate with the Carrier between the time she was expected to return and her actual return to work. The Carrier acknowledges it was unaware of Claimant's failure to mark up for service until she attempted to mark up almost one year later.

The Carrier argues it stated in a letter dated April 5, 2005, that it would consider a possible reinstatement if Claimant made an appoint to meet directly with the General Manager. It alleges Claimant failed to respond to the letter.

The Carrier asserts that the evidence clearly shows that Claimant violated the Carrier's rules. It characterizes the Organization's claim as a leniency reinstatement, which it asserts is reserved to Management. It urges that the claim not be granted by the Board and that the Board uphold her dismissal.

The Organization argues that the Carrier failed to prove the charges against Claimant and argues further that it failed to provide the Claimant with a fair and impartial investigation, evident when it issued the harsh and excessive discipline of dismissal to the Claimant.

The Organization does not dispute Claimant's failure to return at the end of her Leave of Absence. It points out that Claimant testified that it was never her intention to leave the Company and that her Leave of Absence was to obtain further education. UTU maintains Claimant should have been notified at the time of the expiration of her Leave of Absence that she was obligated to report. It asserts that the prudent action would have been for the Carrier to contact Claimant, or her organization representative, and provide a warning that she was absent without leave.

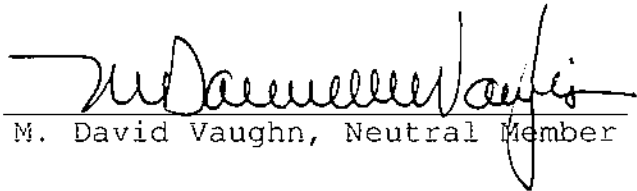
The Organization asks that the claim be sustained and Claimant returned to service with all rights unimpaired, including seniority and health and welfare benefits, and without deduction of outside earnings starting May 14, 2004 and until returned to service.

DISCUSSION AND ANALYSIS: It was the burden of the Carrier to introduce substantial credible evidence on the record as a whole of Claimant's guilt and to establish that the penalty of dismissal was the appropriate response. For the reasons which follow, the Board is persuaded that the Carrier met its burden to demonstrate Claimant's failure to comply with the conditions of her Leave of Absence, but concludes, based on the facts of the case, that reinstatement is in order.

The Board's analysis is influenced by Claimant's prior record and is limited to the facts of this case and does not override the Carrier's right to require compliance with conditions placed on the grant of leaves of absence. In light of Claimant's primary responsibility for her failure to return from leave, reinstatement should be without wages or benefits for the period of her absence.

AWARD: The claim is sustained in part and denied in part. Claimant shall be returned to employment but without wages or benefits for the period of her absence. The period between July 1, 2003 and Claimant's return to service shall not be counted for purposes of seniority.

Dated this 13th day of May, 2006.


M. David Vaughn, Neutral Member


Gene L. Shire
Carrier Member


R. L. Marceau
Employee Member