

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6672**

Parties to Dispute:)	
UNITED TRANSPORTATION UNION)	<u>OPINION & AWARD</u>
-and-)	Case No. 22
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CORPORATION)	Claimant C. E. Klosterman

EMPLOYEE'S STATEMENT OF CLAIM:

“This will present claim and appeal in behalf of Vancouver, WA Conductor C. E. Klosterman for pay for all time lost and complete record clearance of the entire incident, including one (1) year probation account ten (10) day record suspension for alleged violation of GCOR Rule 1.13. (failure to perform service as a full time employee) for absence of 12 weekdays and 15 week-end days during the months of April, May and June 2000.”

FINDINGS

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

On July 28, 2000, following investigation held a week earlier, Carrier determined that Claimant had run afoul of its Attendance Guidelines in April, May and June, 2000 in violation of GCOR Rule 1.13 and assessed this 10-day record suspension and one-year period of probation. By letter dated September 19, 2000, the Organization took exception to Carrier's action and after processing the claim on the property in the usual fashion, advanced the dispute to the Board for final and binding resolution.

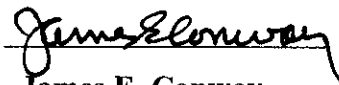
The record indicates that the discipline at issue was predicated upon Claimant's frequency of layoff in the three months in question. Specifically, Carrier determined Claimant had failed to perform service as a full-time employee as a result of 11 weekday absences and 13 week-end days missed during March, April and May, 2000. According to

Carrier's charges, he had marked off 5 weekdays and 2.5 weekend days in April; 5.75 weekdays and 2 weekend days in May; and 5.25 weekdays and 2 weekend days in June. Thus, when added to the unexcused absences Claimant amassed during that three-month period, his absences exceeded permissible limits under the Attendance Guidelines.

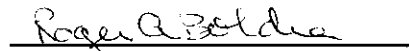
The Guidelines hold employees accountable for being available 75% of the time, measured in three-month increments. As the Organization stresses, however, in this instance Carrier had previously calculated Claimant's absences for the months of April and May in assessing the prior discipline for the March-May timeframe. Consistent with prior precedent on the point, since Carrier's policy is intended to hold employees accountable only for actual absences in months not considered in prior discipline, and since Claimant marked off only five times in June, below his permissible threshold under the Guidelines, the claim is sustained. See Award No. 25, Public Law Board No. 7020 (Simon)(2008).

A W A R D

The Claim is sustained. Claimant's records will be cleared of all reference to this 10-day record suspension and probationary period.



James E. Conway
Chairman and Neutral Member


Roger A. Boldra
Carrier Member
Jay L. Schollmeyer
Employee Member

Dated: Great Falls, VA
March , 2009