

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23955  
Docket Number CL-23774

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station **Employees**  
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9340) that:

1. Carrier violated the Agreement between the parties when, effective September 10, 1979, it unjustly assessed discipline of dismissal from service on Mr. Carey M. Swanson, Telegrapher, Saunders, Wisconsin.

2. Carrier shall now be required to reinstate Mr. Carey M. Swanson, Telegrapher, Saunders, Wisconsin, to the service of the Carrier with his seniority rights and all other rights unimpaired, clear his personal record, exonerate him from the discipline assessed, and **compensate** him for all loss of wages and fringe benefits until he is reinstated to the Carrier's service.

OPINION OF BOARD: This Matter was submitted to this Board on the basis that the discipline of dismissal in this case was unjust and an abuse of the Carrier's discretion. However, we are aware that the Claimant died shortly after this case was submitted to this Board. Without regard to that event, an examination of the record of **investigation** reveals that there was substantial evidence to support the Carrier's conclusion of guilt.

Had Claimant survived, we could have considered the argument made for modification of **the** penalty imposed here, but in **view** of the reality, that consideration is now moot.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July 1982.

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