

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CASE NO. 11

AWARD NO. 11

Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "(1) The dismissal of Sectionman J. G. Palma November 7, 1979, was improper and unwarranted. (System File P-P-473C).
- (2) Sectionman J. G. Palma be reinstated with seniority and other rights restored and paid for all time lost."

At the time of his dismissal from service, Claimant Jesus G. Palma was employed as Sectionman at Pasco, Washington. By letter dated October 12, 1979, Claimant was notified to

attend an investigation on October 18, 1979, concerning Claimant's "...alleged conduct unbecoming an employee and bringing discredit upon Burlington Northern Inc. in statement published in Tri-City Herald newspaper on October 7, 1979 at Pasco, Washington." The investigation was held as scheduled, and Claimant was accompanied by a duly designated representative of the Organization. By letter dated November 7, 1979, Claimant was notified that he was dismissed from service, effective that date, for violation of Maintenance of Way Rules C and 700.

Those Rules read as follows:

Rule 700. "Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subject to criticism and loss of good will."

Rule C. "Any violations of rules or special instructions must be reported promptly to the proper authority."

Upon decision by the Carrier to dismiss Claimant from its service, the Organization appealed the dismissal on Claimant's behalf to the Carrier's Division Superintendent, then to the Assistant Vice President-Operations and finally to the Carrier's highest designated appeals officer, the Assistant to Vice President-Labor Relations. These appeals failed to convince the Carrier to restore Claimant to service with pay for time

lost with seniority and benefits restored. However, the Carrier did offer, on January 6, 1981, to restore the Claimant to service on a leniency basis. This was accomplished on August 11, 1981, following delays occasioned for medical reasons. It is the Carrier's position that its liability, if any, terminated on January 6, 1981, when Claimant was offered reinstatement without prejudice to his adjudicating payment for time lost.

The root cause of this claim was a letter, published over the name of Claimant, in the October 7, 1979, issue of a local newspaper, the Tri-City Herald. The gist of the letter is contained in the following excerpt:

I am being discriminated against in the most inhumane and unreasonable way by the Brotherhood of Maintenance Union and Burlington Northern Railroad which refused to hear my complaint, in my opinion, because I am not a white employee.

The record indicates that while Claimant did not write the letter, it was written for him by a neighbor. Claimant supplied information to the neighbor on which the letter was based, and Claimant stated that he signed the letter because it expressed how he felt. The reason for the letter, according to Claimant, was a number of on-the-job incidents in which he felt he was subjected to ridicule and embarrassment, and even to threats to life and limb. In Claimant's view, this was due to the fact that he is Guatemalan and non-white.

Claimant testified at the investigation that neither the Carrier nor the Organization were of assistance to him when he brought these incidents to their attention. It was for this reason that he did not use the grievance procedure provided by Agreement between the Carrier and the Organization and decided to seek publication in the local newspaper. In fact, however, Claimant did acknowledge that some efforts were made by the Carrier and the Organization, particularly the latter, to help resolve his problems, although the results were not to his satisfaction.

It is the view of this Board that Claimant has ignored his obligation to the Carrier. Third Division Award Nos. 10930 (Dolnick) and 15932 (Ives) are apposite here. In No. 10930, an employe noticed that a trailer was being overloaded. He did not inform his foreman, but instead notified the civil police. This resulted in the arrest of the trailer driver. The Third Division found that the employe's actions had been disloyal and had brought discredit upon his Employer. His dismissal was upheld.

In No. 15932, an employe wrote a letter to his Employer, complaining of various matters. The Third Division found that some of the charges concerned "...Carrier's general operations which fall within the purview of 'business affairs.'" The employe sent copies of the letter to officials of the state

Public Utilities Commission and the Interstate Commerce Commission. The employee's behavior was considered to be a breach of loyalty, thus subjecting the employee to discipline, and his dismissal was upheld.

The Organization has argued that it would be improper for Claimant to be punished for exercising his constitutional right of free speech. This is a misreading of the U. S. Constitution. The Bill of Rights guarantees certain rights against governmental interference; it does not prevent organizations such as the Carrier from establishing and enforcing reasonable requirements such as those involved in this case.

The Organization, in its representation of the Claimant, has raised numerous arguments on his behalf, in addition to the constitutional issue discussed above. It is to its credit that it has done so, in view of the fact that Claimant's letter was as much designed to discredit the Organization as the Carrier. But the Organization's arguments cannot overcome the fact that the Claimant was responsible for the publication of the letter as written, even if he did not personally write it. It was a breach of loyalty to his Employer to have done so, without having made a serious attempt to solve his work problems through the grievance procedure specifically fashioned for that purpose by the Carrier and the Organization. Accordingly, this claim must be denied.

AWARD: Claim denied.

F. H. Funk

F. H. Funk,
Organization Member

W. Hodynsky

W. Hodynsky,
Carrier Member

Richard R. Kasher

Richard R. Kasher,
Chairman and Neutral Member

June 22, 1952