

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

*
*
* CASE NO. 19
*
* AWARD NO. 19
*

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 Extra Gang Foreman Dan Nielsen, June 24, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) That Extran Gang Foreman Dan Nielsen be reinstated to his position of foreman and paid for all time lost."

As the result of an incident which occurred on May 12, 1980 at approximately 3:45 p.m., when the Claimant engaged in activities

which led the Carrier to believe that he was in a state of intoxication while on duty, an investigation was conducted. The Carrier assessed the evidence produced at the investigation and determined that the Claimant was in fact under the influence of alcohol while on duty, and decided that the appropriate penalty for such infraction was dismissal.

In this Board's view, it is unnecessary to restate here the factual elements regarding the incidents which occurred on May 12, 1980. Evidence in the record overwhelmingly establishes that the Claimant was intoxicated while on duty; and, the Claimant's statement to the Carrier in his January 18, 1981 letter which states that during the investigation and in previous letters he has freely admitted to the violation of Rule G of the Carrier's Safety Rules, further establishes that the Carrier had just cause for discipline based on the merits of the case.

The only issues to be addressed by this Board regard allegations by the Organization and the Claimant that certain of the Claimant's procedural rights were violated.

First, the Organization/Claimant allege that the Carrier failed to timely provide the Claimant with his dismissal letter in accordance with Rule 40 of the agreement. Paragraph B provides that "a decision shall be rendered within thirty (30) days following the investigation, and written notice thereof will be given to the employee...." A review of the record in this case indicates that

the decision of dismissal was "rendered" within thirty (30) days, that the dismissal notice was read to the Claimant, and that the only reason that the Claimant failed to receive the written confirmation of his dismissal within the thirty (30) day time period was due to a clerical mix up regarding the Claimant's proper mailing address. In these circumstances we find no basis for sustaining the Organization's procedural objection.

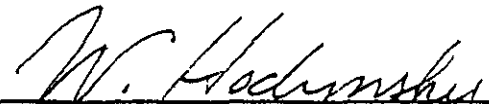
Secondly, the Claimant has contended that he was deprived of his right of due process under the investigation rule when he was not permitted to call a witness to the investigation. The record indicates that the witness sought by the Claimant was only one of several eye witnesses to his drunken actions on the date in question. There is no showing that the testimony which would have been proffered by this witness would have been anything but corroborative of the testimony of several witnesses called by the Carrier. Additionally, the Claimant's letter of January 18, 1981 wherein he alleges that certain of the evidence submitted by those witnesses who testified at the investigation was fabricated, and intimates that the evidence which would have been submitted by the witness he sought to have appear would have resolved such fabrication, is not significant in view of the fact that the Claimant has openly and repeatedly admitted that he was in a state of intoxication on the day that he was observed by several Carrier officers. Finally, the Claimant contends that his rights under the investigation rule

were violated when he was not permitted under Paragraph F of that rule to waive the investigation. Paragraph F reads that "The investigation provided for herein may be waived by the employee in writing, in the presence of a duly authorized representative." There is no showing on the record that the Claimant ever sought to waive the investigation "in writing," and his protestations to the effect that he sought to waive the investigation are not supported in the record by substantial evidence.

In all of the circumstances we find that the Carrier relied upon overwhelmingly clear and convincing evidence that the Grievant had violated Rule G, and that the discipline imposed in the circumstances was not overly severe.

AWARD: Claim denied.


F. H. Funk, Organization Member


W. Hodynsky, Carrier Member


Richard R. Kasher, Chairman
and Neutral Member

July 21, 1983
Saint Paul, MN