

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2746

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BURLINGTON NORTHERN, INC.

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 2

AWARD NO. 2

Public Law Board No. 2746 was established pursuant to the provisions of Public Law 89-456. The parties, Burlington Northern, Inc. (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization) are duly designated carrier and 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:

"The discharge of Section Foreman, K. L. Brooks, January 9, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense.

That Section Foreman K. L. Brooks now be compensated for all time lost and the discipline be stricken from his record."

Prior to his dismissal the Claimant was employed as a Section Foreman at Pendleton, Oregon. His assigned hours were from 7:30 a.m. to 4:00 p.m., Monday through Friday. On November 30, 1978 the Claimant was instructed to work his crew in the Pendleton yards. The Claimant disobeyed these instructions and sent his crew to Helix Yard with orders to burn debris. Instead

of working with his crew, the Claimant went house hunting with his wife, visited a friend in the hospital, and stopped at a grocery store. He also submitted a time card claiming a full eight (8) hours' pay.

The Claimant received notice dated December 1, 1978, to attend an investigation to be held on December 12, 1978 to determine his responsibility in connection with his alleged unauthorized absence from duty. As a result of the investigation, the Carrier dismissed the Claimant on January 10, 1979 for violation of Rules 700, 700(A), 700(B), 702 and 702(B) of the Maintenance of Way Rules and Maintenance of Way Circular MW-15 for failure to comply with instructions, falsification of payroll report, and absenting himself from duty without proper authority on November 30, 1978. The Claimant's personnel record was considered in the assessment of discipline. He had been dismissed on June 16, 1977 for unauthorized absence from duty and timeroll falsification and reinstated on a leniency basis on September 5, 1978.

The Organization appealed the instant dismissal alleging that the Claimant was "set up" and that his decision to send his crew to Helix Yard rather than the Pendleton yards was justified because of weather conditions on November 30, 1978.

The applicable Rules read in pertinent part as follows:

"700. Employees will not be retained in the service who are...dishonest.

"700 (A). Employees who withhold information, or fail to give factual report...will not be retained in the service.

"700 (B). Theft or pilferage shall be considered sufficient cause for dismissal from railroad service.

"702. Employees...must not absent themselves from duty...without proper authority.

"702(B). Employees must comply with instructions from the proper authority."

Paragraph a, Circular M/W-15 of Maintenance of Way

Circulars, reads as follows:

"a. Section Foremen...report and receive instructions from the Roadmaster. They shall at all times keep him informed of their plans and activities. From time to time, they will also receive instructions from and give reports to Track Inspectors, Assistants to Roadmasters, Assistant Roadmasters, General Foremen, Division Roadmasters and Superintendents."

The record revealed substantial and undisputed evidence, including admissions by the Claimant, that he did fail to follow instructions, he did falsify a payroll report and he did absent himself from duty without proper authority.

Regarding the alleged failure to follow instructions, the Organization contended that the Claimant was justified in doing so because the roadbed in Pendleton Yard was frozen, there was no emergency work to be done there, and there was trash to be burned at Helix, which could only be done when the ground was wet. While the Claimant's supervisor did testify that there

was work to be done at the Pendleton Yard, and while the Claimant did not have the authority to disobey his instructions, this element of the Claimant's indiscretions was not as serious as the Claimant's timecard falsification and unauthorized absence. The only response to these charges was that it was the Claimant's supervisor who advised him to find a home nearer the Pendleton Yard. It is suggested that the Claimant was somehow entrapped. However, nothing in the record reveals that the Claimant was encouraged to do his house hunting on Carrier time, nor his grocery shopping, nor his hospital visiting. And certainly, the Claimant was not set up when he falsified his time card. On the contrary, here the Claimant was attempting to take advantage of the Carrier.

The Organization also argued that the discipline was excessive in light of the circumstances. The Claimant testified that he was only away on Carrier time for about forty-five (45) minutes. This Board finds that the discipline was reasonably related to the gravity of the offense. The Claimant's violations fall squarely within Rules 700 and 700(B). Dismissal was not arbitrary and capricious in light of the circumstances. Accordingly, the claim will be denied.

AWARD: Claim denied.

F. H. Funk  
F. H. Funk,  
Organization Member

C. Lane  
C. Lane,  
Carrier Member

Richard R. Kasher  
Richard R. Kasher, Chairman  
and Neutral Member

July 6, 1981  
Saint Paul, Minnesota