

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 21

AWARD NO. 21

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. That the dismissal of Section Laborer Eugene Mitchell, February 20, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
2. Claimant Mitchell to be paid for all time lost, restore all seniority rights and priveleges and remove the dismissal from his personal record."

At the time he was dismissed from service, the Claimant had been employed by the Carrier for three years, and was working as a Sectionman at Interbay, Washington.

On January 10, 1980, at approximately 11:00 a.m., the gang's afternoon meal time, the Claimant is alleged to have made profane and obscene remarks to his Assistant Foreman, Mr. Felix Luna.

Said remarks are alleged by the Carrier to have come as a result of the Claimant being told by his foreman that the Claimant would not be driven to the section tool house, by the foreman, to get his lunch; apparently the Claimant, according to his foreman "...forgot his lunch at the tool house, so probably he didn't have lunch."

The foreman offered uncontroverted testimony that the Claimant said "...blow my d___," in response to the foreman's attempt to explain that he had no obligation to take the gang to a restaurant or back to the tool house for lunch.

Though the Claimant received notice of the investigation of this incident, which the Organization characterizes as "...common day to day language...", he did not appear at the investigation, and hence there is not anything from him in the record that compels this Board to believe that such language is shop talk, particularly when it is articulated to a supervisor in response to said supervisor's refusal to accede to an employee's request for a favor.

According to the uncontradicted testimony of the Assistant Foreman, Claimant did not limit his vilification of the Assistant

Foreman to the aforesaid outburst, which one might argue was an isolated, uncontrollable reflex, but rather, he aggravated the situation by referring to his immediate supervisor, as a "...dumb m_____f_____" who didn't want to "...drive us in."

The Organization's contention that the Carrier's Section Foreman's prior warning to the Claimant, regarding his demeanor and similar language directed to the Assistant Foreman, should result in a confirmation that his language was not violative of Rules 661 and 664, because such language only merited a conversation, rather than a disciplinary investigation, is not persuasive. Rather than showing what the Organization contends, it indicates to this Board that the Claimant failed to heed an informal warning to mend his ways.

In the context of the employee/employer relationship, particularly when that relationship involves close, face to face supervision under trying and dangerous circumstances, at times, as is the case in this industry, insubordination by an employee is not narrowly defined as direct refusal to carry out a lawful order. Rather, in the setting presently confronting us, the Claimant's language and remarks to and about his immediate supervisor constitute willful disrespect and rebelliousness, and as such satisfy the definition of insubordination.

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

July 21, 1983
Saint Paul, MN