

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 11

Case No. 10

STATEMENT OF CLAIM

1. That the Carrier's decision to remove Mr. R. W. Black from the seniority roster was without just and sufficient cause.

2. The Carrier will now be required to return Mr. Black to the service of the Carrier with seniority and all other rights restored unimpaired with compensation for all time lost.

F I N D I N G S

As recounted by the Carrier and the Organization, there is some confusion as to the Claimant's status prior to September 30, 1985. Nevertheless, it is clear that he worked from September 30, 1985 until October 3, 1985. At that time, according to the Carrier, the Claimant simply left work without advising his supervisors as to the reason. The gang on which he was working was abolished on October 28, 1985. There is no dispute as to the

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EMPLOYEE RELATIONS

Carrier's contention that the Claimant failed to file his name and current address within 15 days thereafter, as specified in Rule 15 (c). According to the Carrier, he therefore forfeited "all seniority rights" as provided by Rule 15 (c).

According to the Claimant, however, he advised the Roadmaster prior to his departure on October 3 that he continued to have difficulty with a leg injury suffered several months earlier. He developed further difficulties, consulted a doctor on November 9, and underwent surgery on December 8. On December 30, 1985, he wrote to the Carrier that he had been "off work since Oct. due to illness" but was now available to return to work.

In this instance, the action of the Carrier was unduly harsh. There was no evidence to support the contention that the Claimant was aware that his gang was abolished on October 28, which date set in motion the 15-day notification requirement. Notice of his surgery and recovery therefrom was sent to the Carrier with the Claimant's December 30 letter. There is, in sum, sufficient reason to find that the Claimant was not made aware of the October 28 cut-off date. Nevertheless, the Claimant must be held responsible to some degree to keep the Carrier advised of his circumstances following October 3. Thus, the payment of back pay is inappropriate. Further, if the Claimant fails to accept reinstatement within 10 days of notification thereof, the Carrier's

action in terminating his seniority will remain in effect.

A W A R D

Claim sustained to the extent provided in the Findings.

The Claimant shall be offered reinstatement with seniority unimpaired but without back pay or other retroactive benefits. The Carrier is directed to put this award into effect within 30 days of the date of this award.


HERBERT L. MARX, JR., Referee


C. F. Foose, Employee Member


R.J. Schneider, Carrier Member

NEW YORK, NY

DATED: