

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 14

Case No. 14

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current agreement when it dismissed Mr. J. C. Lucero on May 27, 1987, on charges not sustained by the hearing record.

2. The Carrier will now be required to return Claimant to his former position with seniority and all other rights restored unimpaired with compensation for all time lost.

F I N D I N G S

Following a fair and impartial investigative hearing, the Claimant received the following notice of disciplinary action:

As a result of the formal investigation afforded you on May 6, 1987, you are hereby dismissed from the service of the Burlington Northern Railroad Company for your failure to comply with instructions from proper authority on April 16 and April 20, 1987, absenting yourself from duty without proper authority on April 16 and April 20, 1987, and your quarrelsome and otherwise vicious conduct on April 20, 1987, as was evidenced by testimony at the investigation.

The following entry is being placed on your personal record:

RECEIVED

AUG 15 1988

EMPLOYEE RELATIONS

"May 27, 1987 - Dismissed from service for violation of Rules 563, 564, 570 and 576 of Burlington Northern Safety Rules for failure to comply with instructions, quarrelsome conduct and absence from duty without proper authority."

In assessing this discipline, consideration was given to the previous record violations of similar nature.

The Claimant left work early on both April 16, 1987 and April 20, 1987. Review of the record demonstrates convincing evidence that the Claimant did not have permission to leave on these days and, in fact, was ordered not to leave. The Board also finds that, as determined by the Carrier, the Claimant was quarrelsome and insubordinate in his discussions with supervisors on April 20.

All of this occurred against a background of less than satisfactory work performance in previous weeks, as well as efforts by supervision to place the Claimant in work positions which would suit his capabilities.

As to the severity of discipline based on the proven offenses, the Carrier properly reviewed the Claimant's disciplinary record. This shows two previous suspensions, of 15 and 20 days, for "insubordination, being quarrelsome and having a vicious manner" toward supervision.

The Board finds no basis to disturb the resulting disciplinary action taken by the Carrier.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee



C. F. Foose, Employee Member



R. J. Schneider, Carrier Member

NEW YORK, NY

DATED: