

JUL 15 91

JMS	✓	DWK	✓
RLI		EJK	✓
CLJ		LM	✓
JHW		RJS	✓
WMS		CJA	
MJM		KWC	
CEW		DL	

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 30

Case No. 32

STATEMENT OF CLAIM

1. The Carrier's decision to dismiss Mr. T. J. Samora was in violation of the current agreement. Said action being unduly harsh and in abuse of discretion.

2. The Carrier will now be required to reinstate Claimant to his former position with seniority and all rights restored unimpaired with compensation for all wage loss suffered.

F I N D I N G S

By letter dated March 8, 1990, the Claimant was advised that he was dismissed from service for rule violation in connection with his absence without authority from January 22 through February 12, 1990. This followed an investigative hearing on February 26, 1990, at which the Claimant failed to appear. Letters notifying him of a hearing had been sent to his address of record, although there is no confirmation that he received the letters.

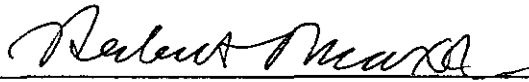
This was the culmination of extensive correspondence with the Claimant directing him to work assignments. Information was received from the Claimant during the course of

this correspondence, much of it contradictory and untimely as to his alleged temporary incapacity to work. The Claimant's disciplinary record shows a long history of failure to maintain his attendance, resulting in a number of previous dismissals and subsequent reinstatements.

There is no basis to question the Carrier's conclusion that the Claimant was incapable or unwilling to meet his commitments as an employee, and the resulting dismissal action was a logical consequence.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Neutral Referee

NEW YORK, N.Y.

DATED: July 12, 1991