

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 40

Case No. 40

STATEMENT OF CLAIM

1. That the Carrier's decision to dismiss Mr. Ivory E. Williamson was in violation of the current agreement, when the Carrier dismissed Claimant without the benefit of an investigation.

2. The Carrier will now be required to reinstate Claimant to his former position with seniority and all rights unimpaired and be compensated for all loss of wages.

F I N D I N G S

The Organization argues that the Claimant was dismissed from service without benefit of an investigation under Rule 26. The Carrier contends that the Claimant forfeited his seniority under Rule 14 (not quoted in the record provided to the Referee) which requires a recalled furloughed employee to report for duty within 15 days.

If in fact the Claimant failed to report as required by Rule 14, then an investigation for discipline or dismissal under Rule 26

is not required, and Rule 14 is self-effectuating. The Claimant alleges, however, that he received the recall notice on January 24, 1991 and reported for duty on February 8, 1991. This is conceded to be within the 15-day requirement. The Carrier alleges, however, that the Claimant received the notice on January 23, 1991. The alleged "proof" of such delivery is mentioned in the Carrier's appeal denial, but such was not documented in the record provided to the Referee.

Under these circumstances, there is insufficient evidence to demonstrate that the Claimant failed to meet the 15-day deadline. The Award will restore his seniority standing and will require that he be reinstated to duty in accordance with his seniority, again provided he reports within 15 days of the Carrier's notification. As to the claim for lost pay, it is evident that the Claimant chose to wait until the last moment, even by his calculations, to report. In addition, his previous record, showing disciplinary action for failure to protect his position, should have made him aware of the necessity of avoiding any question of late return to work. The Award thus will not include any retroactive pay.

A W A R D

Claim sustained to the extent provided in the Findings. The Carrier is directed to place this Award into effect within 30 days of the date of this Award.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: JUL 27 1992