

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 42

Case No. 42

STATEMENT OF CLAIM

1. The Carrier's decision to dismiss Mr. James C. Eason 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.

FINDINGS

The Claimant was subject to an investigation under the charge of "alleged falsification of Railroad Unemployment Insurance Benefits June 26, 1990". Following the investigation, the Claimant was dismissed from service on November 6, 1990.

The matter was the subject of a claim on the Claimant's behalf in which wrongdoing by the Claimant was denied. The record shows that on December 21, 1990 the Claimant was advised of an offer by the Carrier to reinstate him to service with a waiver of all rights

to any claims as a result of the dismissal. The letter advising the Claimant of this indicates by his signature that he did not agree. (Such rejected compromise offers should not be part of the claims record, but it is referred to here because of the circumstances described immediately below.)

On May 21, 1991, the Carrier's Manager, Gangs wrote to the Claimant as follows:

We are agreeable to your reinstatement to service with seniority unimpaired with claimant wa[i]vering all rights to any present or future claims as a result of your dismissal from service on 11-6-98 for violation of Rules 564 and 575 of the Burlington Northern Railroad Safety Rules and General Rules in connection with your falsification of Railroad Retirement Board by claiming unemployment benefits for June 26, 1990, when you also were compensated by the Burlington Northern on this same date. In other words no pay for time loss.

If you are agreeable to the above, please sign below.

At the bottom of the letter are the words, "I agree" with the signature of the grievant (appearing identical to that in the December 21, 1990 letter referenced above) and a date of May 23, 1991.

Since the Referee has not been advised that the May 22, 1991 letter and the Claimant's signed agreement thereto are challenged as other than authentic and fully dispositive of the dispute, there is nothing for the Referee to decide.

A W A R D

Claim dismissed.

*Herbert L. Marx Jr.*

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HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: JUL 27 1992