

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 48

Case No. 48

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it disqualified Group III Operator Mr. Larry Tyler.

2. That the Carrier restore Claimant's Group III Operator rights with all seniority and all other rights unimpaired and compensated for all wage loss suffered.

F I N D I N G S

Following an investigative hearing, the Claimant received the following notice from the Carrier:

Effective this date you are hereby disqualified as a Group III Operator for continued violation of Rules 50, 52, 62 and 63 . . . when you failed to properly secure workheads of Chase tamper, and they bled down and hit crossing on Feb. 20., 1991, at M.P. 188.5, L.S. 485.

The incident in question resulted in \$2,000 damage to the Tamper.

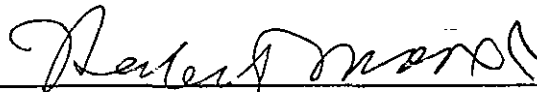
Review of the record indicates support for the Carrier's conclusion that the Claimant was at fault in the incident. As to the resulting disqualification, the Carrier took into account the Claimant's previous record, which shows a number of offenses, including a 15-day suspension in reference to a machine collision the previous year.

The Organization takes particular exception to the citation of "continued" in the notice of disqualification. The Board does not find this improper. As stated in Third Division Award No. 21835:

Determination of guilt as to the alleged offense in question is confined to evidence developed at the investigative hearing. It is, however, entirely reasonable and fitting for the Carrier to weigh the past record of the employe in assessing the degree of penalty.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: November 2, 1992