

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 50

Case No. 50

STATEMENT OF CLAIM

The System Committee of the Brotherhood claims, in behalf of D. Block, Social Security Number 449-70-2544, Payroll Number 7965122, with a service date commencing October 3, 1978, that his dismissal from service on December 5, 1991 for alleged violation of Rules 563, 570, 571 and 576 is arbitrary, capricious, and on the basis of unproven and disproved charges and in violation of Fort Worth & Denver Agreement Rule 26. It is respectfully requested that the claimant be returned to service with all seniority and other rights unimpaired and compensated for all wage loss suffered in accordance with Rule 26 of the Agreement.

F I N D I N G S

The Claimant was subject to an investigative hearing under the charge of being absent without authority on November 11, 1991 at Dalhart, Texas. The record of hearing demonstrated the validity of the charge, and the Claimant was dismissed from service as a result.

The Board finds that the Claimant was given proper notice of the charge against him; reference to specific rules is not necessarily required when the charge is otherwise precise. The hearing was conducted in a fair manner.

The single offense would not, of course, warrant dismissal. However, the Carrier properly considered the Claimant's disciplinary record in assessing the severity of the penalty. This record include a previous dismissal (with later reinstatement), as well as four suspensions within the previous three years. There is no basis for modification of the penalty.

A W A R D

Claim denied.

A handwritten signature in cursive script, reading "Herbert L. Marx, Jr.", is written over a horizontal line.

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: April 29, 1993