

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 61

Case No. 61

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement when it dismissed Section Laborer F. M. Montano from service on May 15, 1995 for alleged violation of Rules 1.1, 1.1.2 and proneness to personal injury [which was] arbitrary, capricious and on the basis of unproven and disproved charges and is in violation of Rules of the Agreement.

2. The Carrier will now be required to return Claimant to service with all seniority and other rights unimpaired and compensated for all wage loss suffered.

FINDINGS

The Claimant was subject to an investigative hearing following his report of a sprained back, which apparently developed in the course of a day's work of shoveling rock. The hearing was based on this incident, but primarily it concerned the Claimant's alleged long-term proneness to injury. Following the hearing, the Claimant was dismissed from service.

At the hearing, reference was made to the Claimant's 14 previous injuries owing to duty-related causes since 1980. The record

also shows that the Claimant had been counseled and subject to training concerning safe working conduct. The Claimant himself had no explanation as to his inability to maintain a satisfactory safety record. All this leaves no doubt that the Claimant is simply unsuited for the type of employment offered by the Carrier. The dismissal action was a judicious decision in consideration of the continuing safety of the Claimant as well as other employees.

A W A R D

Claim denied.

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

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: November 5, 1996