

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 62

Case No. 62

STATEMENT OF CLAIM

(1) The Carrier violated the provisions of the current Agreement when the discipline it assessed to six (6) B&B employees was arbitrary, capricious and on the basis of unproven charges and in violation of Rule 40 of the Burlington Northern 1982 Agreement.

(2) The Carrier will now be required to overturn the discipline received by the Claimants with all seniority and other rights unimpaired and compensated for all wage loss suffered, and that all references to the discipline assessed as a result of this investigation be stricken from their records.

FINDINGS

The Claimants include a Foreman and five members of his crew engaged in an assignment to remove a piling from a creek bed near Bridge 4.42. The Foreman determined that the piling should be "pulled" by use of a large crane. During the unsuccessful attempt to remove the piling, a piece of the rigging flew off and struck one of the crew members (the Crane Operator) in the face.

The Carrier determined, after preliminary investigation and from testimony at the investigative hearing afforded the six Claimants, that there were significant lapses in the manner in which the assignment was undertaken. This included but was not limited to the Foreman's failure to conduct a preliminary job briefing with the crew as a group prior to undertaking the "pull". The Foreman and the crew members indicated there had been some individual briefing prior to and during the action. The Carrier concluded that this did not constitute the job briefing specifically required under the Carrier's safety procedures.

The Organization contends that the discipline was improper and based on "unproven charges". The Board does not agree. The Board finds there was sufficient cause for discipline, given the serious consequences which might have ensued from the failure to operate in a fully safe manner; indeed, an injury to one of the crew members did result.

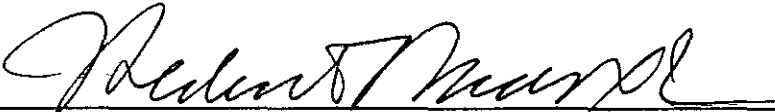
As to the severity of penalty, all Claimants received an Entry of Censure on their records, and two of the crew members also received five-day disciplinary suspensions. The Board has no basis to find these penalties inappropriate.

The Foreman, as supervisor of the crew, received a 10-day disciplinary suspension. His discipline also included "loss of Foreman's rights". Since no date is indicated as to the length of such loss of rights, the action can only be assumed to be permanent.

The Foreman's record shows that he has held this position continuously since 1981, with no indication of previous disciplinary action. The Board finds the permanent loss of Foreman status to be unduly harsh under the circumstances. The Award will modify the Foreman's discipline to direct his reinstatement to Foreman status after one year (March 8, 1997), upon his written bid when a vacancy in such position occurs and his seniority permits (but without displacement of a currently serving Foreman).

A W A R D

Claim sustained as to the Foreman Claimant to the extent provided in the Findings. Claim denied as to the five crew members.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: January 20, 1997