PUBLIC LAW BOARD No. 4381: CASE No. 11

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF THE CLAIM

1. The discipline, thirty (30) days of suspension, imposed upon Mr. E.E. Jeffries for alleged violation of Rules 563 and 564 of the Burlington Northern Railroad Company's General and Safety Rules was unwarranted, excessive and in violation of the Agreement (System File REG-SP-134/AMWB 86-03-05B).

2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including all straight time and overtime work performed by Regional Tie Gang No. 7 during his suspension.

FINDINGS OF THE BOARD

On the evening of July 25, 1985, the Claimant, Mr. Edmond E. Jeffries engaged in verbal confrontations with a number of co-workers, including his assistant foreman and foreman. As a result, Mr. Jeffries was subsequently charged with being insubordinate, quarrelsome, vicious and with using vulgar language. He was suspended from service for a period of thirty (30) days.

The Organization contends, in part, that the investigation was not held in conformity with Rule 40c because Mr. Jeffries and his representative were not given five (5) full days notice. This contention was not raised on property at the time of the investigative hearing. This Board, therefore, does not have authority to rule on this contention. Notwithstanding the absence of the full five days notice, the Organization presented a strong and competent defense against the charges. We conclude from the record that Mr. Jeffries was provided a fair and impartial investigative hearing.

Mr. Jeffries did not initiate the verbal confrontations, and others shared in the use of strong language. Nevertheless, an apology from the man that initially insulted Mr. Jeffries did not calm him. Rather, Mr. Jeffries continued to disrupt the dining car by challenging other men to fight in a generalized lashing out verbally at anyone within range.

Of particular concern to this Board was Mr. Jeffries' confrontations with his assistant foreman and foreman. To both men he was belligerent, confrontational and he failed to comply with their specific and reasonable instructions to leave the dining car. It is evident from the record

that the foreman shared some degree of responsibility for the strong language used between them. Nevertheless, this shared responsibility does not extend to the failure of Mr. Jeffries to withdraw when specifically instructed to do so. Mr. Jeffries understood the instructions; he chose not to comply.

Upon consideration of the entire record of this case, including testimony as to the common language used by the work crew, the general level of heated exchange among the men and the foremans' own use of vulgar language, we believe a moderation of the discipline is warranted. However, Mr. Jeffries' refusal to comply with the instructions to leave the dining car is serious insubordination and warrants a substantial disciplinary suspension.

AWARD

The disciplinary suspension shall be reduced from thirty (30) days to fifteen (15) days. Mr. Jeffries shall be paid lost wages for the fifteen (15) days period.

Ronald L. Miller
Chairman and Neutral Member

Maxine Timberman
Carrier Member

Bruce G. Glover
Organization Member

16 Sept 1988
Date