

PUBLIC LAW BOARD NO. 4402

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **BURLINGTON NORTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM

- (1) The dismissal of Foreman A. M. Gabel for alleged violation of General Rule A and Rules 351, 351(A) and 351(B) of the Rules of the Maintenance of Way was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File #5 Gr./GMWA 86-10-6D A. M. Gabel).
- (2) The Claimant shall be reinstated with seniority unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all time lost as a result of his dismissal.

OPINION OF BOARD

As a result of charges dated August 21, 1986, investigation held on August 26, 1986 and by letter dated September 5, 1986, Claimant, a section foreman with approximately 15 years of service, was dismissed for failing to protect the movement of a rail grinder.

On August 19, 1986, Claimant was assigned as a foreman/pilot of a Loram Rail Grinding Machine which was being used by an outside concern to perform rail grinding on the Carrier's track leading into North St. Louis. Claimant's specific function was to pilot the movements of the grinding machine through the Carrier's territory limits and obtain the necessary track and time permits from the dispatcher.

On that day, Claimant received a track and time permit from the holding signal to the end CTC signal on the main line. At 3:20 p.m., the grinder proceeded past the CTC limits of the permit and part way through a switch onto trackage owned by the Terminal Railroad. The grinder stopped, reversed and then derailed.

At the time of the derailment, Claimant's responsibility as pilot was to see that the track and time limits of the permit were not violated. When the grinder proceeded past the

CTC limits onto the Terminal Railroad trackage, Claimant did not perform that function. Therefore, the Carrier's determination that Claimant violated the cited rules governing safety, track and time is supported by substantial evidence in this record.

In light of Claimant's responsibility for the operation of the grinder within the permit limits, the Organization's assertions that Claimant may have advised others of the boundaries of the permit, had not specifically authorized movement past the limits of the permit or that the relief pilot had arrived do not change the result or detract from the fact that Claimant's responsibility was to see that the permit limits were not violated. In part, the Organization's arguments are premised upon resolution of credibility conflicts in favor of Claimant's version of the events. Absent compelling reasons exhibited by the record which are not present in this matter, it is not the function of this Board to resolve credibility conflicts. Further, with respect to the arrival of the relief pilot, we note that the record demonstrates that at the time Claimant was released, the grinder had already exceeded the limits of the permit.

However, although we are of the opinion that the Carrier has demonstrated substantial evidence to support the conclusion that Claimant committed the rule violations as alleged, we are not satisfied that dismissal was warranted. In light of Claimant's length of service, we are of the opinion that dismissal was excessive in this case. We shall therefore require that Claimant be returned to service. Because of the serious consequences that could occur when a track and time permit is violated in the manner demonstrated by the record in this case and because we note that this is not the first time that Claimant was disciplined for safety related issues (i.e., a September 1981 dismissal and a February 1983 reinstatement without pay), return to service shall be without compensation for time lost.

AWARD

Claim sustained in part. Claimant shall be returned to service with seniority

unimpaired but without compensation for time lost.



Edwin H. Benn
Neutral Member



E. J. Kallinen
Carrier Member



P. S. Swanson
Organization Member

Denver, Colorado
December 7, 1988