Award No. 2
Case No. 2

PUBLIC LAW BOARD NO. 4530

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM: Claim of Engineer L. T. Vaughn, Memphis, Tennessee, for reinstatement to service with full seniority and vacation rights unimpaired, for payment of all time loss from April 28, 1987, until reinstated to the service of the Carrier, payment for attending the investigation conducted on April 14, 1987; removal of the discipline from his personal record and restitution of any loss of fringe benefits.

FINDINGS: After a complete review of the record in the submissions and arguments of both parties, it is the decision of this Board that the Carrier violated Article 32, Section A(6)(c) of the Engineer's Agreement Schedule by failing to ". . . arrange for the presence of each witness who has material knowledge of the incident" at the investigation hearing. The facts in the matter establish that the Carrier did not require the attendance at the investigation hearing of the train dispatcher who had material knowledge of the incident. Instead, the train dispatcher was informed by the Carrier that his presence had been requested and that he could attend but would not be paid for his time or expense, "unless the applicable schedule rule provides otherwise". This statement is sufficiently vague to cause serious doubt on the part of the train dispatcher about the necessity of his attendance. Moreover, at the investigation the Carrier introduced a signed statement of the dispatcher dealing with the alleged infraction--thus, establishing the materiality of his evidence from the Carrier's perspective. It is the finding of this Board that the Carrier's handling of the witness violated the Claimant's rights to confront the charges made against him and to crossexamine his accusers.

The remaining matter to be addressed by the Board is the Claimant's personal injury settlement with the Carrier, which included his resignation from service. In his signed release and resignation, the Claimant specifically exempted from release this claim and now argues that he is entitled to both back pay resulting from the suspension and restoration of his seniority. The Board cannot discern logic or evidence to support the argument

that the Carrier, on securing his resignation with a financial consideration, opened to him the opportunity for reinstatement through the arbitration process. This portion of the claim, therefore, is denied.

AWARD

The claim is sustained, in part. The Claimant will be made whole for all losses accruing between the effective date of suspension and the date his resignation release was effective. He also will be paid for attending the investigation on April 14, 1988. He remains permanently separated from the service of the Carrier. Carrier is directed to make this award effective within 30 days.

William L. McKee
Chairman and Neutral

E. E. Watson
For the Organization

W. M. Schubert
For the Carrier

Dated February 27, 1989

Fort Worth, Texas