

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 42

Carrier File No. 4MWB 90-06-19

Organization File No. T-M-713

STATEMENT OF CLAIM

1. The ten (10) days's suspension imposed upon Track Inspector K. P. Knutsen for alleged violation of Rules B and K of the Maintenance of Way Rules and Rule 338 of the Safety Rules and General Rules was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement.

2. Claimant K. P. Knutsen shall be compensated for all wage loss suffered and his record shall be cleared of the charges leveled against him.

F I N D I N G S

In connection with the investigative hearing in this disciplinary proceeding, the Organization raises several threshold procedural matters. The Board finds these without substance. While the General Chairman did not receive five days' advance notice of the original date of hearing, the Carrier did send such notice in timely fashion by certified mail; the Claimant did

receive timely advice; and the hearing was postponed to provide the General Chairman with the necessary advance notice.


The Organization notes that the letter notifying the Claimant of the disciplinary action was not signed by the hearing officer but rather by another Carrier representative. The Board does not conclude from this that the resulting action was not consonant with the hearing officer's judgment, nor does the Board find this a specific Rule violation. As to the conduct of the hearing itself, the Board's review of the record indicates that the Organization had ample opportunity to raise questions concerning other incidents which it contended were pertinent to the investigation.

As to the merits, the Board finds the record unconvincing, under all the circumstances, as to any proven culpability of the Claimant, despite the fact that it is clear that an accident occurred. While a warning or other record notice may have been in order, the Board finds the suspension unduly harsh and unwarranted.

A W A R D

Claim sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.


HERBERT L. MARX, JR., Chairman and Neutral Member


MARK J. SCHAPPAUGH, Employee Member


D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: April 29, 1994