

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 57

Carrier File No. 4MWB 91-2-27E

Organization File No. T-M-781-H

STATEMENT OF CLAIM

1. The dismissal of Group 4 Machine Operator S. H. Voss for alleged violation of Rules 532 and 532B was without just and sufficient cause and in violation of the Agreement.

2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

F I N D I N G S

Following an investigative hearing, the Claimant was dismissed from service based on his failure to obtain permission from the Roadmaster for his absence from work for personal reasons on August 6-9, 1990. The record shows that the Claimant was fully aware of his responsibility in this regard. Standing by itself, this absence would not be cause for dismissal. The Claimant, however, had received previous disciplinary suspensions of 10, 20, 30 and 40 days for similar offenses. The Carrier, having followed progress-

ive corrective disciplinary procedures, was left with the virtual inevitability of a dismissal action.

The Organization raises a procedural matter as to the failure of the Carrier to provide a copy of the hearing transcript at the time the discipline was issued, citing Rule 40 E, which reads as follows:

E. The employe and the duly authorized representative shall be furnished a copy of the transcript of investigation, including all statements, reports, and information made a matter of record.

The reasonable interpretation of this provision is that such information is to be furnished in timely fashion; that is, to enable knowledgeable appeal of the decision. As pointed out by the Organization, Public Law Board No. 4402, Award No. 17 (Benn) and Public Law Board No. 4104, Award Nos. 39 and 42 (Scheinman), warn as to the need for future compliance in this regard. In this instance, however, the alleged failure to make prompt provision of the transcript occurred prior to the issuance of the cited Awards. Further, the transcript was furnished once the matter had been brought to the Carrier's attention at the initial appeal level. The Board does not find this a basis to reverse the dismissal action.

A W A R D

Claim denied.

Herbert L. Marx, Jr.
HERBERT L. MARX, Jr, Chairman and Neutral Member

Mark J. Schappaugh
MARK J. SCHAPPAUGH, Employee Member

D. J. Merrell
D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED:

July 16, 1993