

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN, INC.

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 1

AWARD NO. 1

Public Law Board No. 2746 was established pursuant to the provisions of Public Law 89-456. The parties, Burlington Northern, Inc. (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization) are duly designated carrier and organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"The discharge from service of Head Welder, F. F. Bourgeois effective Friday, May 18, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense.

Head Welder F. F. Bourgeois be returned to service, paid for all time lost and his record cleared."

Prior to his dismissal for falsification of expenses, Claimant was assigned as a head welder in the Carrier's Track Department, headquartered at Auburn, Washington. In April of 1979 the Claimant submitted an expense account for lodging and expenses for the month of March, 1979. When the Timekeeper reviewed the Claimant's expense account, he noted that the

Claimant was on vacation on March 13, 1979 and March 14, 1979 and that he was absent from work on March 28, 1979 but claimed expenses for those days. The Timekeeper after notifying the Roadmaster, was instructed to call the motel at which the Claimant had reported he had stayed. The Timekeeper spoke with Evy Brummet, manager of the Bavarian Chalet Motel in Sumner, Washington, and was advised that no one with Claimant's name had stayed at the motel.

An investigation was held on April 24, 1979, at which the Claimant admitted that he did not stay at the motel. The Claimant testified that he had in fact stayed in his brother's trailer and that he had submitted his expense account on Bavarian Chalet Motel's stationery because he "thought the Company had to have a valid receipt, or, I mean, one with a printed letterhead on it, so I got one and sent it in." Based on the evidence developed at the investigation, the Carrier dismissed the Claimant from service effective May 18, 1979.

The Organization raised three issues in the Claimant's defense: (1) the investigation was not fair and impartial because the Roadmaster, who served as the Conducting Officer, also testified as a witness; (2) the Roadmaster violated Agreement provisions dealing with the Claimant's assignment; and, (3) the Carrier's decision to dismiss Claimant was arbitrary and capricious.

The Organization's first contention goes to the fairness of the investigation. The propriety of prohibiting a conducting officer from testifying as a witness at an investigation is obvious. The Organization has failed, however, to substantiate its claim. In the instant case the investigating officer responded to questions asked of him by the Claimant's representative. The questions were not directly related to the falsification of the expense account and the officer testified only to the extent that he was called upon to do so by the Claimant's representative. An employee representative cannot ask questions of the conducting officer and then allege that the discipline should be set aside on the basis of procedural unfairness.

The Organization's second contention, that Agreement provisions relating to Claimant's assignment were violated, is not persuasive. The substance of this contention is that the Roadmaster made an oral agreement with the Claimant concerning the position he was to occupy and his headquarters point, in violation of Rules 21D, 54, 66 and 69A. The argument was presented in an attempt to impeach the credibility of the Roadmaster. Not only is the relevancy of the Roadmaster's alleged violation of bulletin and assignment rules questionable, but this Board finds that no such violations occurred.

The Claimant had placed a bid on a head welder's job headquartered at Seattle, Washington. An employee junior to Claimant also bid on the job. Claimant was working the Seattle

job pending assignment by bulletin but had not been assigned the position. The junior employee was working the head welder position in Auburn and he told Claimant that he wanted the Seattle assignment. Claimant and the junior employee approached the Roadmaster about the change. In order to accomplish the change, Claimant withdrew his bid on the Seattle position leaving it open to the junior employee, who was the next senior employee bidding on the position. A vacancy then existed in the Auburn position and Claimant filled it. These changes were discussed with the Roadmaster, who did what he could to accommodate the employees. The Claimant was not coerced to rescind his bid or to accept the Auburn position. There was no verbal agreement violating any contract provision and no change was made in the contract in violation of Rule 69A.

The Organization's final contention is that the dismissal was arbitrary and capricious. Supporting this argument is the Claimant's belief that some kind of formal receipt was needed; his belief that he was entitled to full expenses, including an allegation that the merger protective provisions applied; and, his assertion that the Company, if it did not accept his expenses, should have simply disallowed the expenses and permitted the Claimant to proceed on a claim basis to collect the expenses. These arguments do nothing to refute the undisputed evidence that the Claimant filed a falsified expense account in the amount

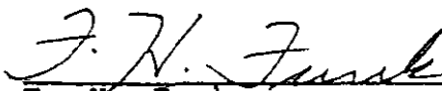
of \$390.60. The Claimant admitted that the account was not valid. This falsification constituted a violation of Rules 700 and 700B, which read in pertinent part as follows:

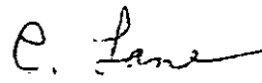
"700. Employees will not be retained in the service who are...dishonest."

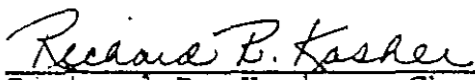
"700B. Theft...shall be considered sufficient cause for dismissal."

In light of the undisputed fact that Claimant falsified his expense account, this Board finds that dismissal was not arbitrary and capricious. Accordingly, the claim will be denied.

AWARD: Claim denied.


F. H. Funk,
Organization Member


C. Lane,
Carrier Member


Richard R. Kasher, Chairman
and Neutral Member

July 6, 1981
Saint Paul, Minnesota