

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 10

AWARD NO. 10

Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor 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:

- "(1) The ten (10) days' censure of suspension from service effective October 18, 1979, of Machine Operator B. J. Brager was without just and sufficient cause and assessed in violation of Rule 40. (System File S-P-202C).
- (2) That Machine Operator B. J. Brager be paid for all time lost and the censure be removed from Claimant's record."

The Claimant, Brian J. Brager, is employed as a Machine Operator with headquarters at Seattle, Washington. By telegram

dated September 19, 1979, Claimant was notified to attend an investigation on September 24, 1979, in connection with alleged irregularities in Claimant's August, 1979, expense account. The investigation was rescheduled for September 28, 1979, and held on that date. Claimant was present and accompanied by a duly designated representative of the Organization.

By letter dated October 12, 1979, Claimant was notified by the Carrier that as a result of the investigation, he was found to be in violation of Rules 700 and 700B of the Maintenance of Way Operating Rules by submitting a bar bill of \$4.50 in his expense account. As penalty, a notice of censure was placed in his personal record and he was assessed ten days' discipline, effective October 18, 1979.

This Board will not reach this claim on its merits because we agree with the Organization that the discipline was assessed in violation of Rule 40. That Rule states that if, after investigation, a

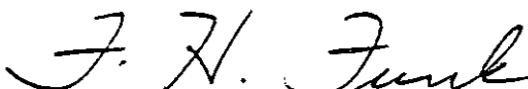
"...decision results in suspension or dismissal, it shall become effective as promptly as necessary relief can be furnished, but in no case more than five (5) calendar days after notice of such decision to the employee. If not effected within five (5) calendar days, or if employee is called back to service prior to completion of suspension period, any unserved portion of the suspension period shall be cancelled."

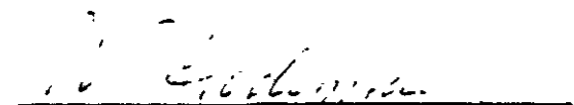
The Carrier does not dispute that the ten day suspension became effective more than five (5) days after the notice to Claimant. It argues, however, that under the circumstances the


suspension should not be disturbed. In its view, the quoted portion of Rule 40 refers only to unserved portions of a suspension. Since the suspension has been served, there is no unserved portion to be cancelled. According to the Carrier, the Organization has raised this matter too late because "The rule does not require the entire suspension to be set aside once served."

This Board does not agree. Rule 40 says plainly that a suspension must be put into effect no later than five (5) calendar days after notice to the employee. That was not done in the case of Claimant and the Carrier, for that reason, violated Rule 40. The sentence relied on by the Carrier does not support the Carrier's arguments. In our view, that sentence simply governs how unserved portions of discipline assessed in violation of Rule 40 are to be handled. We do not read it to mean that once discipline has been served, even if assessed in violation of Rule 40, it cannot be set aside. Accordingly, this claim must be sustained.

AWARD: Claim sustained. Notice of censure to be removed from the Carrier's records, and the Claimant to be compensated for time lost.


F. H. Funk,
Organization Member


W. Hodynsky,
Carrier Member


Richard R. Kasher,
Chairman and Neutral Member

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