

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. 15

AWARD NO. 15

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 dismissal of Section Laborer R. G. Richardson August 21, 1979, was without just and sufficient cause. (System File T-M-277C).
2. That Section Laborer R. G. Richardson now be returned to service with all seniority and privileges unimpaired and paid for all time lost 'including straight time and time and one-half until returned to service.'"

At the time of his dismissal Claimant Randall G. Richardson was employed as a Section Laborer on Tie Gang 10 at Sioux City, Iowa. By letter of July 26, 1979, Claimant was notified to attend

an investigation on August 7, 1979, in connection "...with your alleged absence from duty without proper authority on July 26, 1979, at Sioux City, Iowa." The investigation was held on the date scheduled and Claimant was present. However, he had not arranged for representation by the Organization, and gave his consent to the investigation going forward without such representation. By letter dated August 21, 1979, Claimant was informed that he was dismissed from the Carrier's service, effective that date, for violation of Rules 660 and 665, and because of his past unsatisfactory record with the Carrier.

Rules 660 and 665 state:

Rule 660. "The fact that an employee may not have been examined on certain rules and regulations, will not be accepted as an excuse for failure to be conversant therewith."

Rule 665. "Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the company service while on duty. They must not absent themselves from duty, change duties with or substitute others in their place without proper authority."

The record shows that Claimant admitted that he was absent from work without authority on July 26, 1979. His reason was that he did not set the alarm and slept right through the time when he should have awakened.

This Board finds that there is no question but that Claimant was in violation of Carrier's rules. The decision to assess the penalty of dismissal was properly based on Claimant's similar offenses in May and October, 1978, and in June, 1979. Also,

the notice of investigation, while it did not specifically mention Rules 660 and 665, did adequately notify Claimant of the charge against him. Accordingly, there is no basis for overturning the Carrier's decision, and this claim must be denied. However, the Carrier did offer a leniency reinstatement to Claimant if he would contact the Social Counseling Department and if there was an affirmative report on his progress. The decision to continue that offer is within the province of the Carrier.

AWARD: Claim denied.

F. H. Funk
F. H. Funk,
Organization Member

W. Hodynsky
W. Hodynsky,
Carrier Member

Richard R. Kasher
Richard R. Kasher,
Chairman and Neutral Member

April 22, 1982