

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN, INC.

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CASE NO. 6

AWARD NO. 6

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 removal and dismissal of Sectionman (laborer) Jeffrey T. Schmidt, was without just and sufficient cause and wholly disproportionate to the alleged offense.

Sectionman (laborer) Jeffrey T. Schmidt now be returned to service, compensated for all time lost including overtime and straight time and the dismissal be stricken from his record."

Prior to his dismissal the Claimant was employed as a Sectionman at the Carrier's Northtown Yard, Minneapolis, Minnesota. On May 3, 1979 Claimant's gang was changing out switch ties in Northtown Yard following a train derailment. At approximately 3:00 p.m. the Claimant's Assistant Foreman instructed the Claimant to place a tie. The incident that followed resulted in the Claimant's dismissal from service for insubordination.

The Carrier asserts that testimony taken at an investigation held on May 11, 1979 established conclusively that the Claimant was insubordinate. While this Board finds that the Claimant was indeed insubordinate on May 3, 1979, it also finds that mitigating circumstances demand a less severe penalty.

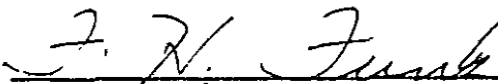
The testimony taken at the investigation is conflicting with respect to the question of whether the Claimant verbally refused to place the tie. The record does reveal that the Claimant was told four times by his Assistant Foreman to place the tie. Those four requests came within a ten second time frame. The record conflicts regarding the phrasing of the instruction. The Assistant Foreman testified that he told the Claimant "to place that goddamn tie or (he) would fire him; that was exact." The Claimant testified that his Assistant Foreman put it another way: "Put it in, put it in, put that sonofabitch in or else go home." The Claimant alleged that he was stunned and confused by the abruptness and rapid-fire nature of the order. Whether the Claimant's description or his Assistant Foreman's is more accurate is not dispositive of this dispute. It is obvious, however, that the Assistant Foreman who was under extreme pressure to repair the track, acted less than properly in the circumstances. His attitude was quarrelsome almost to the point of being provocative. The Claimant testified that he was shocked after he was given the instruction. He just stood there. Seeing this idleness, the

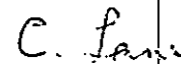
Assistant Foreman reacted by saying, "Put that tie in you son-ofabitch." When the Claimant didn't, he was told to drop his tongs and go home.


It is apparent that neither the Claimant nor his Assistant Foreman acted with much discretion. Both were working under the pressure of a derailment, attempting to prevent further delays. The Foreman knew that a train was shortly approaching the track that was being repaired; he did not convey this to the crew. The record is unclear regarding who initiated the confrontation, however it is clear that the Claimant's actions were compounded by his Foreman's attitude.

Recognizing that discipline must be reasonably related to the offense, and by no means condoning insubordination, this Board finds that the Claimant should be reinstated without back pay. To this extent, the claim will be sustained.

AWARD: The Claimant shall be reinstated without back pay.


F. H. Funk,
Organization Member


C. Lane,
Carrier Member


Richard R. Kasher, Chairman
and Neutral Member

July 6, 1981
Saint Paul, Minnesota