

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY	*	
	*	
-and-	*	CASE NO. 8
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	AWARD NO. 8
	*	

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 Track Laborer (Sectionman) L.W. Evans, October 12, 1979, was without just and sufficient cause. (System File 22-3 MW-20 12/14/79D).
- (2) Track Laborer (Sectionman) L.W. Evans be reinstated to his former position and paid for all time lost."

Claimant L. W. Evans entered the Carrier's service on September 12, 1978. At the time of his dismissal from service, he was employed as a Track Laborer on Gang 909 at Denver,

Colorado. By letter dated September 5, 1979, Claimant was directed to attend an investigation at 8:30 a.m. on September 12, 1979, concerning his alleged failure to comply with instructions, and his alleged use of profane and vulgar language to a member of supervision. The investigation was held as scheduled. The Claimant was present but was not accompanied by a representative of the Organization. After approximately 25 minutes Claimant left after having complained that the room was cold.

By letter dated October 10, 1979, the Claimant was informed that he was dismissed from service for violation of Maintenance of Way Department Rules 700 and 701, and Burlington Northern Safety Rule 667. Those rules read as follows:

Rule 700. "Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subject to criticism and loss of good will or who do not meet their personal obligations."

Rule 701. "Courteous and orderly conduct is required of all employees. Boisterous, profane or vulgar language is forbidden."

Rule 667. "Employees must comply with instructions from proper authority."

The record shows that on August 30, 1979, Claimant had a limp which he said resulted from hurting his ankle while playing basketball the previous evening. When told by his Foreman to complete an off duty personal injury form, Claimant refused. He continued to refuse when other Carrier Officers

instructed him to fill out the form. It was not until he was instructed to do so by the Assistant Superintendent of Railway Maintenance, that the Claimant completed the form.

When told by his Foreman what work he would be doing that day, Claimant asserted that his ankle injury would prevent his doing that work. The Foreman told him to see a doctor, to which the Claimant replied "F_ _ you, I do not have to go to any doctor." The instruction was repeated several times, and so was the answer.

Carrier officials decided to have Claimant work with another gang and to have that Foreman and his supervisors "...not argue with /Claimant/ but to instruct him on what duties to do and leave it go at that, not to create any type of situation." However, Claimant did not perform his duties, but walked around, sat in the shade, and then left the job between 12:30 and 1:00 p.m.

The Organization does not essentially dispute the above stated facts which were adduced during the investigation. Instead, the Organization makes the following points. First, that the Claimant was provoked by his Foreman. Second, that the use of profanity is commonplace on the property and has not been a cause for discipline in the past. Third, at the outset of the investigation Claimant protested that "...no Union Representative was present and therefore, he should have been given a postponement." Fourth, the hearing officer should

have permitted the Claimant to act on his own behalf; instead the hearing officer was hostile to the Claimant and denied him due process. Fifth, Claimant walked out of the investigation because it was cold in the room and his request that the air conditioning be turned off was ignored.

There is absolutely no evidence that the Claimant was provoked into his display of insubordination and profane language. Indeed, the record indicates that, rather than offering provocation, officers of the Carrier exhibited extreme constraint.

It comes as no surprise to this Board that the use of profane and vulgar language is commonplace on the property. However, the language used by Claimant was not merely rough "shop talk"; it was abusive and disrespectful language aimed at his Foreman, repeated a number of times, and said in the context of a refusal to obey a reasonable order. The Carrier is under no obligation to suffer such behavior.

Procedurally, there was proper notice. It was Claimant's responsibility to secure his representative. The hearing officer did not, as alleged, improperly restrict Claimant's participation at the investigation. Finally, Claimant may have been cold, but the purpose of the investigation was to determine whether he was to continue in the service of the Carrier, and he put his temporary discomfort ahead of his employment when he left the investigation. When he left the investigation, he did so at his peril.

This Board finds that Claimant's guilt was established, that the procedure was not irregular, and that the punishment was not arbitrary. Accordingly, the claim must be denied.

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

June 22, 1952