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Roy C. Robinson

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 3408

BROTHERHOOD RAILWAY CARMEN OF THE  
UNITED STATES AND CANADA, AFL-CIO

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 69  
(Carrier File No. ESCA 86-7-30)

STATEMENT OF CLAIM

1. That the Burlington Northern Railroad Company violated the terms of our Current Agreement particularly Rule 35(a) when they arbitrarily dismissed Fort Worth, Texas Carman R. M. Brawner from service effective February 26, 1986.

2. That, accordingly, the Burlington Northern Railroad Company be ordered to reinstate R. W. Brawner with seniority unimpaired and that he be allowed any pay due him under the provision of New York Dock conditions as per coordination of Burlington Northern and Fort Worth and Denver Terminal facilities at Fort Worth, Texas. Further that the mark be removed from his personal record.

F I N D I N G S

Claimant was displaced from employment on December 1, 1982 and thereupon became a "dismissed employee" under the so-called New York Dock protective conditions. The Carrier states that a letter was sent to the Claimant on January 13, 1983, stating in pertinent part as follows:

Your "protective period" has been determined, based on a service date of April 11, 1977, to be 67 months.

Your "dismissal allowance" has been determined to be \$1,764.29. Such allowance shall be adjusted to reflect any subsequent general wage increases.

You should keep me currently advised of all earnings from outside employment and unemployment insurance received. You will be kept informed of any work opportunities available to you, including available work not part of any assignment.

The Claimant performed service for the Carrier at various times during 1983-85. Subsequent to this, it became known to the Carrier that the Claimant was engaged in outside employment, but he failed to report such earnings on the forms which he submitted to receive his guaranteed wages as provided under New York Dock. He was subsequently subject to an investigative hearing on the following charge:

. . . for the purpose of ascertaining the facts and determining your alleged responsibility in connection with failure to disclose amount earned in outside employment and simultaneously claiming & receiving excessive dismissal amount payments for pay periods last three days of November, 1985, first pay period of December 1985, second pay period of December 1985, and first pay period of January 1986.

Following the hearing, the Claimant was dismissed from service.

During the hearing, Carrier witnesses testified that the

Claimant had been advised orally as to the necessity of reporting outside earnings when claiming guarantee pay. The Claimant denied receiving such advice. He also denied having received the January 13, 1983 letter, as well as stating that he had not been furnished a copy of New York Dock conditions which specify that guaranteed earnings are reduced by the amount of earnings in other employment.

At the hearing, the Claimant apparently had some information as to his alleged non-receipt of the January 13, 1983 letter, but when offered the opportunity to make a statement at the end of the hearing, he failed to provide such explanation.

The Board concludes that the Claimant must have been aware of the requirement to report outside earnings. A space is provided in the guarantee forms, which he repeatedly completed, to specify such information. There is no reason to doubt the Carrier witnesses' testimony that they advised the Claimant as to the necessity of reporting outside earnings. The Claimant further admitted that he had been receiving outside earnings. This resulted in the Claimant's receipt of wages to which he knowingly was not entitled. The Board perceives no requirement that the Carrier furnish a copy of New York Dock conditions to a covered employee. Under the circumstances, the Board finds

that dismissal action was warranted. Article I, Section 6 (d) of New York Dock provides that a dismissal allowance shall cease in the event of "dismissal for justifiable cause under existing agreements".

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



E. J. KALLINEN, Carrier Member



ROBERT K. SCHAFER, JR., Employee Member

NEW YORK, NY

DATED: 5-23-88