

PUBLIC LAW BOARD NO. 4104

Case No. 14

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Dismissal of Welder G. Thelen for his alleged responsibility in connection with personal injury to Welder J. Peters was in violation of the Agreement and excessive

2. The Claimant shall be reinstated to service and be compensated for all wage loss suffered.

OPINION OF BOARD: At the time this dispute arose, Claimant was employed as a Welder with four years seniority. On May 5, 1983, an incident occurred involving Claimant and Welder J. Peters and T. Haulk.

As a result of this incident, Carrier conducted an investigation, which was held on May 19, 1983. Thereafter, Claimant was notified that he was discharged from service.

The Organization appealed Carrier's decision. Carrier rejected the appeal. Thereafter, the claim was advanced to this Board for adjudication.

The Organization contends that Claimant received only three days' notice of the investigation and five, as required by Rule 40(c) of the Agreement. Therefore, it argues, the claim should be allowed as presented.

As to the merits, the Organization argues that dismissal is an excessively harsh penalty for Claimant's actions. It

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suggests that his good judgment was hampered by his consumption of alcohol on the day in question. Moreover, it stresses, he did not intend to harm Welder Pters. Therefore, it suggests, discharge is not warranted for Claimant's misconduct. Accordingly, the Organization asks that the claim be sustained.

Carrier maintains that the claim was not timely appealed on the property or to this Board. In addition, Carrier asserts that Claimant's acts were so egregious as to justify his dismissal. Therefore, Carrier asks that the claim be rejected on its merits as well as on procedural grounds.

A review of the record convinces this Board that the claim must fail. While Claimant did not receive five days' notice of the hearing, he was able to secure a representative and proceed with the hearing. As such, Carrier's failure to give adequate notice, while not to be condoned, did not prejudice Claimant (For a similar finding, see our Award in Case No. 8, decided herewith).

As to the merits, there is no doubt that claimant engaged in serious misconduct on the day in question. The fact that his judgment may have been hampered by alcohol use does not mitigate against his discharge. In spraying another Welder with a fire extinguisher Claimant should have known that injury could result. In fact such injury did occur and were it

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not for the fact that Welder J. Peters was partially covered with a blanket, the injury could have been far serious.

Given these factors and Claimant's relative lack of seniority, the penalty of discharge was not excessive. Accordingly and for the foregoing reasons the claim must be rejected.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

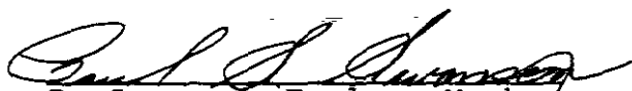
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

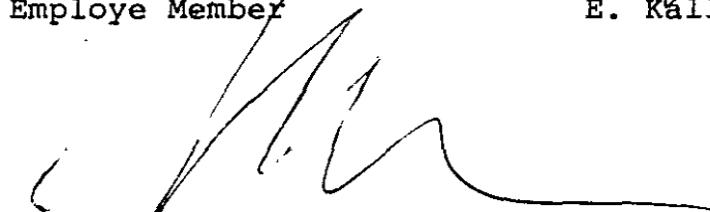
That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

Feb. 7, 1989