

PUBLIC LAW BOARD NO. 4104

Case No. 37

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

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

1. The dismissal of Group 3 Machine Operator T.L. Brandt for alleged 'violation of Rules 500 and 500(B) of the Burlington Northern Rules of the Maintenance of Way Department' was unwarranted, without just and sufficient cause and on the basis of unproven charges. (System File 8/Gr. GMWA 85-4-2)

2. The Claimant shall be reinstated to service with seniority unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, T.L. Brandt, was assigned as a Group 3 Machine Operator on Surface Correction Gang RN#14. On October 2, 1984, Claimant was temporarily reassigned to move his machine and work with the Hastings Section until October 19, 1984. On October 30, 1984, Claimant submitted an expense account claiming actual expenses incurred during the time he was away from his original gang. On November 7, 1984, a review of Claimant's expense account form revealed that he had already claimed per diem expenses for the same period on his roll.

As a result of this incident, Carrier conducted an investigation on November 19, 1984. On December 17, 1984, Claimant was dismissed from Carrier's service.

The Organization contends that Carrier's imposition of discipline was improper. It maintains that Claimant had no intention of receiving any expense monies that were not properly

due him. It alleges that during the period in question, Claimant was not aware that Foreman Claus claimed the expenses for each day Claimant worked, and completed the expense account on his own. When Claimant received his payroll check on October 30, 1984, he maintains that he did not review the check for the amount but signed it and gave it to his wife. The Organization asserts that he was not aware of any problem with his expense account until he received the investigation notice on November 7, 1984 for which he contacted Carrier to attempt to rectify the situation. In the Organization's view, dismissal is inappropriate since the incident did not involve any intention on behalf of Claimant to claim expenses not due to him. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, asserts that Claimant attempted to secure money to which he was not entitled. It maintains that testimony contained within the transcript reveals that he was not instructed to submit claims for expenses. Although the Organization maintains that Claimant was not aware that he had been paid for the expenses, Carrier does not believe this to be substantiated. It asserts that Claimant received his payroll check on October 30, 1984 covering the first half October pay period. After receiving that paycheck, it maintains that he submitted an expense account form for expenses covering that same period. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged. Additionally, Carrier points out that this is Claimant's second offense involving dishonesty. On September 22,

1981, he was dismissed for selling and disposing of railroad property without authorization, and was reinstated on January 4, 1982 as a matter of managerial leniency. Because of this previous offense, Carrier insists that dismissal is appropriate here. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

A complete review of the record with respect to the charges indicates that Claimant did submit an expense account form for which he had previously been compensated. However, Claimant's discharge is unjustified in that he did not deliberately attempt to seek double payment for expenses. Some question exists that Claimant was not aware that the Roadmaster was completing the expense form for him since he was temporarily assigned to another gang. Therefore, this duplication was understandable, even though a violation of Carrier rules did exist.

Under these circumstances, a disciplinary suspension and not discharge is appropriate. At the hearing on September 21, 1987 I directed that Claimant be returned to service. However, I conclude that no back pay is in order. This suspension reminds Claimant of the serious misconduct that occurred in this incident. However, it also takes into account the mitigating circumstances previously referred to. Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in the Opinion.

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 sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/4/90