

PUBLIC LAW BOARD NO. 4340

Joseph Lazar, Referee

AWARD NO. 13

CASE NO. 13

PARTIES )      BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
    TO )      vs  
DISPUTE )      BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT  
OF CLAIM:

Claim in behalf of J. J. Short that he be returned to service with payment for all time lost and that the charges be removed from his service record as a result of his dismissal April 11, 1988.

FINDINGS:

The Board, on consideration of the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated April 10, 1987, that it has jurisdiction of the parties and the subject matter, and that, pursuant to the Agreement dated April 10, 1987, oral hearing by the parties, including Claimant, has been duly waived.

On May 4, 1982, Claimant had an on-the-job injury, and from July 6, 1983 until April 11, 1988, he was on Carrier-granted medical leave of absence. The Carrier dismissed the Claimant on April 11, 1988, following his medical release to return to work, and on June 10, 1988, the Carrier held a formal investigation charging the Claimant with failure to report the on-the-job injury of May 4, 1982.

Between May 4, 1982 and April 11, 1988, almost six years elapsed, and in this period the Carrier had knowledge of the on-the-job injury and took no action charging the Claimant with rules violation for failure to report the on-the-job injury of May 4, 1982.

During the period from May 4, 1982 to April 11, 1988, there were a number of changes in supervisory personnel, key witnesses became unavailable, memories faded, records became unavailable, and circumstances and conditions changed. June 10, 1988 was too late to hold a fair and impartial hearing. See National Railroad Adjustment Board, Third Division Awards Nos. 14504 and 14505 (Dorsey), and National Railroad Adjustment Board, Third Division Award No. 24701 (Klaus).

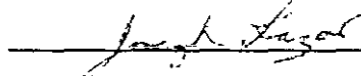
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A W A R D

1. The Carrier is in violation of the Agreement.
2. The claim is sustained.

Order: The Carrier shall implement this Award within thirty days of date of Award.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: October 30, 1989

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