

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 24

Case No. 26

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement when it dismissed Mr. S.W. O'Neal without first according Claimant a fair and impartial investigation. Said action being excessive and in abuse of discretion.

2. The Carrier shall now be required to reinstate Claimant to his former position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered during the intervening period.

F I N D I N G S

The Claimant completed his regular work schedule at 4 p.m. on June 5, 1988. He was called at home at around 11 p.m. to return to duty to assist with a derailment and resulting track damage. He reported as directed. During the course of his work, he was observed by his Foreman to be acting in a boisterous and "hyperactive" manner. When

questioning the Claimant, the Foreman noted the odor of alcohol on his breath. This was confirmed by the Trainmaster and a Special Agent, who were called to the scene.

The Claimant consented to a urine test, which he underwent immediately thereafter. The result of the test showed that the Claimant had consumed a "substantial" amount of alcohol, apparently prior to reporting for duty. The Claimant admitted that he had consumed "a few beers earlier in the day".

Following this incident, the Claimant was subject to an investigative hearing under the following charges:

. . . your responsibility, if any, in connection with your alleged violation of Rule "G" when reporting for duty at North Yard on or about 2300 Hours, June 5, 1989; and for your alleged insubordination by your alleged failure to comply with instructions from proper authority by departing North Yard Terminal Office Building after having been instructed by proper authority to remain there for further instructions at about 0430 Hours, June, 1989.

Upon completion of the investigation the Claimant was found guilty of the charges and dismissed from service.

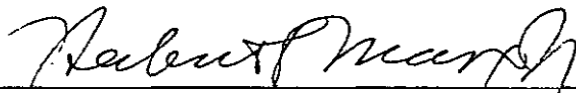
The reference to the Claimant's alleged insubordination concerned his failure to remain in the Trainmaster's office after returning from the urine test. In the Trainmaster's momentary absence, the Claimant apparently left and went home. By this time, however, he had already been informed

that he was removed from service. The Board does not give great weight to the insubordination charge.

The evidence does show, however, that the Claimant reported for duty while under the influence of alcohol, as confirmed by the urine test. This is a clear violation of Rule "G". Absent other considerations, some allowance might be made for the fact that the Claimant was called to work outside his regular schedule. Nevertheless, it was his responsibility to decline such call, given the admitted fact that he had been drinking. Mitigation of the penalty is not warranted, however, in view of the Claimant's previous disciplinary record. This includes a previous dismissal for "safety" rule violation and reinstatement on a leniency basis, as well as two earlier disciplinary suspensions. In view of this, the resulting dismissal in this instance was not inappropriate.

A W A R D

Claim denied.



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HERBERT L. MARX, JR., Neutral Referee

NEW YORK, N.Y.

DATED: July 1, 1991