

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 3

Case No. 4

STATEMENT OF CLAIM

Claim on behalf of L. E. Kennard that he be reinstated to his former position with all seniority and other benefits unimpaired and that he be compensated for all wage loss suffered as a result of his dismissal from service effective September 19, 1986.

F I N D I N G S

Following an investigative hearing, the Claimant was dismissed from service for "failure to comply with instructions from proper authority at approximately 12:30 p.m., August 13, 1986".

As made clear at the hearing, the Claimant, an Assistant Foreman, was directed by a Special Agent to report to the Roadmaster's office, where two police officers were waiting to talk with him. According to the Special Agent's testimony, the Claimant acknowledged this and stated he would comply "in a few minutes".

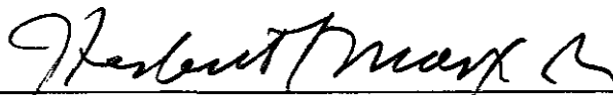
Another witness, a Machine Operator, testified that the Claimant instead directed him to get his car and drive the Claimant to a nearby bus stop. The Claimant left his own car on Carrier property. The testimony of the witness provided strong indication that the Claimant was seeking to avoid contact with the police officers.

An Organization representative of the Claimant appeared at the hearing as scheduled. The Claimant failed to appear, although the record indicates that he received notification of the hearing.

The record does not show whether or not the Claimant reported for duty subsequent to this occurrence. By his failure to appear at the hearing, however, a negative inference can properly be drawn that, contrary to proper instruction given to him, he had "skipped" from the property. Further based on the Claimant's failure to appear at the hearing and explain his actions, there is no basis for the Board to disturb the resulting disciplinary action taken by the Carrier.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee

NEW YORK, NY

DATED: June 9, 1988