

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 44

Case No. 44

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement particularly but not restricted to Rule 26 when on January 15, 1992 it dismissed Ms. A. M. McDonald for alleged violation of Rule "G". Said action being arbitrary, capricious, and in abuse of discretion.

2. The Carrier will now be required to return Claimant to service with all seniority and other rights unimpaired and compensated for all wage loss suffered.

F I N D I N G S

Following an investigative hearing, the Claimant was dismissed from service under the following charge:

Violation of Rule G, by being under the influence of alcoholic beverages and failure to be alert, attentive and devote yourself exclusively to your duties as Trackman, as a resulted of you testing positive for ethanol, while on duty as Trackman Laborer, North Yard, in Fort Worth, Texas, on December 4, 1991, as disclosed by testimonies and evidence presented at investigation accorded you on January 2, 1992.

Based on suspicion of being under the influence of alcoholic beverages as a result of odor detected and her demeanor, the Claimant was properly subject to a urine test for alcohol. The results, as provided at the hearing by the Carrier, showed that she had tested substantially positive for ethanol.

The Organization argues that the testimony of the Roadmaster was inadequate as to providing sufficient proof of the validity of the testing procedure. The Board does not find this of significance, however, since the Roadmaster was not present during the testing. The hearing record provides documentation which persuades the Board that there was no convincing reason to suggest that the testing was improperly conducted. In addition, the Claimant admitted to having consumed alcohol during the previous evening prior to her reporting for duty.

The Organization cites Third Division Award No. 28761 (Lieberman) in support of its position. That Award provides no support here, since the circumstances therein were sufficiently at variance with the matter here under review.

Any question as to the severity of the disciplinary action is resolved by the fact that the Claimant had previously been dismissed (and subsequently reinstated) under another Rule "G" violation.

A W A R D

Claim denied.

A handwritten signature in dark ink, appearing to read "Herbert L. Marx, Jr.", is written over a horizontal line.

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: September 9, 1993