PUBLIC LAW BOARD No. 4381: Case No. 2

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

V.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF THE CLAIM

1. The Carrier's disqualification on August 2, 1985 of Mr. G. P. Lewis as Cook on Tie Gang 961 was without just and sufficient cause, arbitrary and an abuse of Carrier's discretion (System File REG-BM-170/BMWB 85-12-30).

2. The Carrier shall restore the Claimant's regional cook seniority date of July 12, 1985 to the District 18 roster, clear his personal record of the charges leveled against him and he shall be compensated for all wage loss suffered, including the $410.67 for expenses and travel time and overtime wages for attending the hearing as directed in Hobson, Montana, for the convenience of the Carrier.

FINDINGS

In July, 1985, the Claimant, Mr. Gregory P. Lewis, exercised his seniority rights and took a cook's position on Tie Gang No. 961. Several weeks after assuming that position, the Carrier received a petition, signed by a majority of the members of the Gang, in which they complained about Mr. Lewis' cooking and requested that the Carrier remove Mr. Lewis from the cook's position. Subsequently, the Carrier disqualified Mr. Lewis and removed him from the position. An unjust treatment hearing was held on August 22, 1985. The issue on the merits of this claim is whether the Organization has proved that Mr. Lewis' disqualification from the cook's position was arbitrary, unjust or an abuse of managerial discretion.

Before addressing the merits of this case, certain other issues raised in the claim must be decided. First, the location of the hearing complied with Rule 40 - C. It was more "practicable" to schedule the hearing in a location other than at the headquarters of Mr. Lewis (following his reassignment). Second, there is no evidence in the record that the hearing officer was biased and partial in his conduct of the hearing. Rather, the record shows that Mr. Lewis was provided a fair and impartial hearing. Third, the Organization and Mr. Lewis have not convincingly established that the petition was sufficiently in error or fraudulent as to warrant disregarding it. This conclusion is supported by the weight of evidence presented by persons who both signed the

petition and testified at the hearing. Finally, the letter of November 12, 1985 by Mr. Daume to Mr. Lewis complied with the provision of Rule 42 - A, in that Mr. Daume gave reasons for the denial of all elements of the claim, including:

> "You have submitted no evidence whatsoever that any of the other employees were paid anything than that to which they were entitled or that you were not. Everyone involved was compensated in accordance with the rules, including yourself."

Moving to the central issue ... the disqualification of Mr. Lewis ... the contention made by Mr. Lewis that the Carrier acted without sufficient cause has not been established by substantial evidence. To the contrary, there is substantial evidence in the record that the Carrier acted in a reasonable manner, based upon Mr. Lewis' actual performance as a cook. Over a sufficient period of time, Mr. Lewis did not demonstrate adequate abilities to cook or to maintain sanitary conditions in the kitchen. There was ample opportunity for Mr. Lewis to show his abilities, to adequately perform the multiple duties of the position, or to bring what initially might have been deficiencies up to an acceptable level of performance. The members of the Gang were not obligated to tolerate unacceptable food service for a longer period of time.

Furthermore and finally, the contention that Mr. Lewis was denied sufficient equipment and supplies to perform his duties has not been substantiated. The conclusion that must be drawn from the record (especially the testimony of many persons that ate Mr. Lewis' food) is that he did not cook very well. The Carrier properly acted upon the request of the employees to remove Mr. Lewis.

AWARD

Claim Denied.

Ronald L. Miller
Chairman and Neutral Member

Maxine Timberman
Carrier Member

Bruce G. Glover
Organization Member

3 August 1988
Date