

PUBLIC LAW BOARD No. 4381: Case No. 32

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

v.

BURLINGTON NORTHERN RAILROAD

#### STATEMENT OF CLAIM

1. The dismissal of Sectionman S. H. Vorce for alleged violation of Rule 500 of the Burlington Northern Railroad Rules of the Maintenance of Way Department - Operating Department in connection with his entering a guilty plea to a felony murder charge in the Circuit Court of the State of Oregon for Umatilla County on July 22, 1985 was improper, unwarranted, excessive, without just and sufficient cause and in violation of the Agreement (System File: P-P-638/AMWB 86-06-03).

2. As a consequence of the violation referred to in Part 1. hereof, the Claimant shall be returned to service with seniority and other benefits unimpaired and he shall be paid for all time lost.

#### FINDINGS

On February 22, 1985, the Claimant, Mr. Steven H. Vorce, was arrested, charged with murder, and incarcerated in the Umatilla County (Oregon) jail. On July 22, 1985, Mr. Vorce entered a guilty plea. The Carrier's security force was notified on October 10, 1985 that Mr. Vorce had changed his plea on the murder charge from not guilty to guilty. A Carrier officer, Superintendent Shafer, received this information on October 14, 1985. On that same date, October 14, 1985, Superintendent Shafer withheld Mr. Vorce from service and scheduled an investigation for October 25, 1985. The investigation was postponed twice upon the request of the Organization, and held on January 3, 1986 with the Claimant in absentia.

It is clear from the record that the Carrier officer, who has disciplinary responsibility in this matter, first learned about Mr. Vorce's plea change on October 14, 1985. He was withheld from service on the same date. The Organization contends that the Carrier is in violation of Rule 40(B), because by scheduling the investigation for October 25, 1985, the investigation would have been held eleven (11) days after Mr. Vorce was withheld rather than the ten (10) days specified in Rule 40 (B). Rule 40 (B) states:

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"In the case of an employee who may be held out of service pending investigation in cases involving serious infraction of rules the investigation shall be HELD within ten (10) days after date withheld from service. He will be notified at time removed from service of the reason therefor." (emphasis added)

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The Carrier initially scheduled an investigation on October 25, 1985, eleven (11) days after the date Mr. Vorce was withheld from service. If the investigation would have been held on a date in excess of ten (10) days, then Rule 40(B) would have been violated. However, because of two postponements requested by the Organization (the first on October 17, 1985), the October 25, 1985 date was no longer relevant to this matter. The Carrier was not in violation of Rule 40(B).

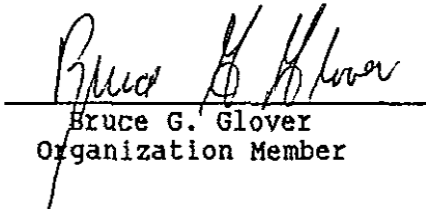
Mr. Vorce admitted guilt to the charge of murder. The Carrier has properly applied Rule 500 to this off-duty conduct. The discipline of discharge is not arbitrary, capricious or excessive, and should not be disturbed.

AWARD

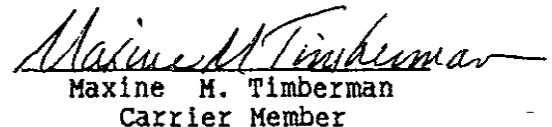
Claim denied.



Ronald L. Miller  
Chairman and Neutral Member



Bruce G. Glover  
Organization Member



Maxine M. Timberman  
Carrier Member

15 Aug 90  
Date