PUBLIC LAW BOARD No. 4381: CASE No. 7

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

v.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it failed to properly compensate Grinder Operators J. R. Puhek and J. D. Meacham for wage loss suffered as the result of being improperly withheld from service from November 7, 1985 until November 22, 1985 and November 7, 1985 until November 27, 1985, respectively.

2. The Carrier further violated the Agreement when it failed to reimburse Messrs. Puhek and Meacham, each twenty-one (21) cents per mile account traveling at the direction of the Carrier from Libby, Montana to Spokane, Washington (System File S-S-392/AMWB 86-01-31C).

3. As a result of the above-described violations:

   (a) Claimant J. R. Puhek shall be allowed three hundred thirty dollars and seventy cents ($330.70) per diem meal and lodging allowance and he shall be allowed sixty-eight dollars and eighty-eight cents ($68.88) mileage allowance.

   (b) Claimant J. D. Meacham shall be compensated one hundred ninety-five dollars and four cents ($195.04) representing sixteen (16) hours pay at the grinder operator straight time rate, for time improperly withheld from service on November 25 and 26, 1985; he shall be allowed four hundred forty-one dollars ($441.00) per diem meal and lodging allowance and he shall be allowed sixty-eight dollars and eighty-eight cents ($68.88) mileage allowance.

FINDINGS

The Claimants, Mr. Jack R. Puhek and Mr. Joey D. Meacham, were removed from service on November 6, 1985, pending completion of an investigation. However, due to defects in the investigation procedure, Mr. Puhek and Mr. Meacham were restored to service, as of November 22, 1985. Mr. Puhek returned to work on November 22, 1985 and Mr. Meacham returned on November 27, 1985.

Both men were returned to service under terms of Rule 40G which states:

> "If it is found that an employe has been unjustly disciplined or dismissed, such discipline shall be set aside and removed from the record. He shall be reinstated with his seniority rights unimpaired, and be compensated for wage loss, if any, suffered by him, resulting from such discipline or suspension."

The main issue in dispute between the parties is the meaning of "wage loss." The Carrier contends that "wage" is limited to only straight time wage rates. The Organization contends that the meal and lodging allowance provided for in Rule 38G and the mileage reimbursement provided for in Rule 35B are also properly a part of the "wage loss" restitution.

The overall purpose of Rule 40G is clear, and represents a traditional remedy in collective bargaining where an employee has been unjustly disciplined or dismissed. The disciplinary action is rescinded, the employe's personnel record cleared, the employe restored to his former position with unimpaired seniority, and made whole for lost wages. To do less than make the employe fully whole, would be to penalize the employe where no loss is warranted or justified. In the context of Rule 40G, the words "wage loss" are ambiguous and can only be given applicable meaning within the overall purpose of Rule 40G.

The Organization persuasively argues that the meal and lodging allowance is uniquely linked to wage rates. An employe assigned to a position subject to per diem payment per Rule 38 (applicable to Mr. Puhek and Mr. Meacham) receives such payment without regard to actual expenses incurred. Moreover, this allowance is paid "... for each day of the calendar week, including rest days and holidays... except when the employe is voluntarily absent" (emphasis added). Clearly, an employe in a designated position, who is available for scheduled work, is paid both the applicable wage rate and the Rule 38 allowance. To fairly and fully provide restitution for Mr. Puhek and Mr. Meacham, they must be paid the money due them under Rule 38.

While there is a well established principle in collective bargaining for wage restitution when an employe is made whole for rescinded discipline, the treatment of overtime pay is far from settled. In the absence of evidence that the Carrier and the Organization intended to include overtime pay in a make whole situation, this Board will not so order.

During the period of their removal from service, Mr. Puhek and Mr. Meacham were ordered by the Carrier to travel to meet with the Carrier's Superintendent at his office in Spokane, Washington. The Claimants had to use their personal vehicles. This travel was directly related to the rescinded disciplinary action, therefore, the Claimants should be reimbursed in accordance with Rule 35B.

Finally, the Claimants were restored to service as of November 22, 1985. Mr. Puhek returned to work on that date; Mr. Meacham did not report until November 27th. The Organization has provided no convincing reason why Mr. Meacham should be compensated (including the Rule 38 allowance) for the period of November 22nd to November 27th.

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AWARD

Mr. Jack R. Puhek and Mr. Joey D. Meacham shall be paid their regular, straight-time wage rate and applicable Rule 38 allowance for the period of November 6, 1985 to November 22, 1985. Mr. Puhek and Mr. Meacham are to be reimbursed in accordance with Rule 35B for travel between Libby, Montana and Spokane, Washington.

Ronald L. Miller
Chairman and Neutral Member

Maxine M. Timberman
Carrier Member

Karl P. Knutsen
Organization Member

4-5-88
Date