

PUBLIC LAW BOARD NO. 4431

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

BURLINGTON NORTHERN RAILROAD COMPANY

Case Nos. 12
13

STATEMENT OF CLAIM

Case No. 12

That the Claimant be made whole; that the discipline be set aside and removed from his personal record; that his Grinder Operator date of 3/12/86 be returned to the District 18 Seniority Roster; and that he be compensated for his lost wages owing to his being forced to return to his former position as a B&B Helper, as well as any losses incurred while furloughed and deprived of any future opportunity to work.

Case No. 13

That the Claimant be made whole; that the disqualification be set aside and removed from his personal record; that his Grinder Operator date of 7/8/86 be returned to the District 18 Seniority Roster; and that he be compensated for his lost wages owing to his being forced to return to his former position as a B&B Helper, as well as any losses incurred while furloughed and deprived of any future opportunities to work.

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FINDINGS

Claimant G. P. Lewis began service with Carrier on September 25, 1974, as a B&B Helper. Since that time, he has been promoted to Second Class Carpenter and First Class Carpenter, and occasionally used as a Shop Carpenter and Relief B&B Foreman. Claimant was elected President of BMWE Lodge 289 in Livingston, Montana. He was thereafter elected Local Chairman. In 1985, he had some difficulty with Carrier in his capacity as Local Chairman. He was disciplined for conducting Union business on Company time and for making critical comments about Carrier to the local press.

In April 1985, Claimant was promoted to a Group 3 Machine Operator and subsequently disqualified. In July 1985, he was assigned as a Regional Gang Cook and also disqualified. On March 12, 1986, Claimant was promoted to a Grinder Operator position and disqualified. On July 8, 1986, he was again placed on a Grinder Operator job and disqualified. Claimant protested both Grinder disqualifications and requested an unjust treatment hearing in each instance. Those hearings were held and at the conclusion of each, Claimant remained disqualified. Claims were filed that were denied at each level of the procedure. Both claims were ultimately appealed to this Board for consideration. Since both claims present essentially the same argument, the Board has decided to combine the claims and review them together.

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This Board has reviewed the extensive record of both claims and we are compelled to conclude that Carrier had a right to judge Claimant as disqualified on both occasions. We see nothing in either record that supports the Organization's argument that Claimant was discriminated against because he was a Union official. Neither does the Board find anything in the record to indicate that Claimant did not receive a full and fair hearing. The truth appears to be that even though Claimant was a good Carpenter, he did not have the skills necessary to grind rail.

This Board does not have authority to substitute its judgment for Carrier in a skill and ability matter. We see no reason for Carrier to disqualify Claimant if in fact he was a competent grinder. It makes no sense. Claimant appears to be an employe who has had considerable difficulty qualifying outside his craft. He was disqualified as a Machine Operator, a Cook, and twice as a Grinder. This Board has no power to direct that Carrier grant Claimant an opportunity to qualify unless Claimant's seniority rights allow him to bid on a position. The Board can only suggest that the next time Claimant bids a job, Carrier be especially sensitive to his need to qualify and work with him to that end. If, however, he cannot properly perform the job, Carrier has the right, if not the obligation, to disqualify him.

AWARD

The claim is denied.

R. E. Dennis
R. E. Dennis, Neutral Member

B. G. Glover
B. G. Glover, Employe Member

M. M. Timberman
M. M. Timberman, Carrier Member

8-10-89
Date of Adoption