

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 18

Carrier File No. MWA 890926

Organization File No. C-89-D070-2

STATEMENT OF CLAIM

1. The dismissal of Welder G. K. Sears for alleged violation of Rule 570 was unwarranted and without just and sufficient cause.

2. The Claimant shall be reinstated to service with seniority and all other benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

F I N D I N G S

Following an investigative hearing, the Claimant was dismissed from service for "failure to protect [his] assignment Monday June 19, 1989 at Mullen, Nebraska". The record shows that the Claimant failed to make contact with the Welding Supervisor, or the Roadmaster, despite previous instructions to do so. Disciplinary action was

obviously warranted, particularly in view of previous disciplinary penalties relating to the Claimant's failure to protect his assignment.

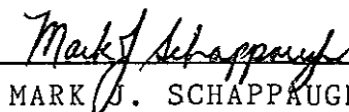
The Claimant had completed 12 years of service at the time of his dismissal. Given all the circumstances involved in this matter, the Board finds the penalty of dismissal unduly harsh. The Award will direct the Claimant's reinstatement with seniority unimpaired, but without back pay or retroactive benefits. The time-out of service since the Claimant's dismissal shall remain on his record as an extended disciplinary suspension. In view of this, the Claimant should clearly understand that any further failure to comply with applicable rules could readily be sufficient grounds for his dismissal.

A W A R D

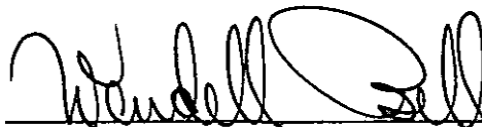
Claim sustained to the extent provided in the Findings. The Carrier is directed to put this Award into effect within thirty days of the date of this Award.



HERBERT L. MARX, JR., Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL BELL, Carrier Member

New York, N.Y.

DATED: