

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 54

Carrier File No. 4 MWA 900807

Organization File No. C-90-D070-3

STATEMENT OF CLAIM

1. The dismissal of Trackman P. Guerrero for alleged violation of Rules 2, 564 and 574 of the Burlington Northern Railroad " . . . by your dishonesty and failure to report rules violation in connection with the substitution of Remedios Lopez working in place of Manuel Guerrero during the period of May 11, 1989, to December 1, 1989" was arbitrary, excessive and in violation of the Agreement.

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

F I N D I N G S

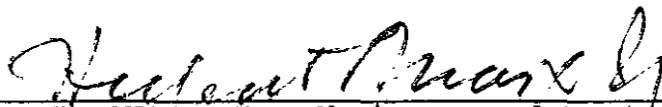
Following an investigative hearing, the Claimant was dismissed from service for his "dishonesty and failure to report rules violation in connection with the substitution of Remedios Lopez working in place of Manuel Guerrero [the Claimant's brother] during the period of May 11, 1989 to December 1, 1989".

The investigative hearing was originally scheduled within the required 15 days. Before such date, however, the Carrier postponed the hearing to a date two weeks later. The Organization argues that this invalidates the hearing and its results. The Board notes, however, that no protest as to the short delay in hearing was made prior to or, more significantly, at the hearing itself. Since there was no perceived harm to the Claimant's defense, the Board in this instance finds no basis to invalidate the hearing.

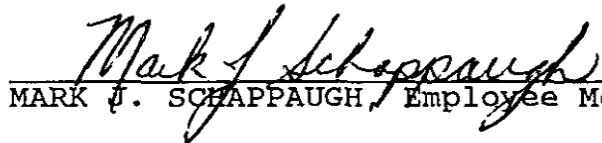
The record clearly demonstrates the Claimant's role in having knowledge of and assisting in deceiving the Carrier in the substitution of a person without employee status for that of the employee recalled to service. The offense is serious, and the Carrier's dismissal action was a reasonable result.

A W A R D

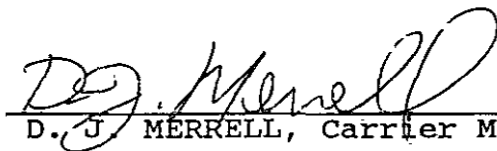
Claim denied.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED:

*July 16, 1993*