

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 64

Carrier File No. 1MWB 92-03-23

Organization File No. S-P-465-W

STATEMENT OF CLAIM

1. The dismissal of Machine Operator S. L. Humphries for alleged "violation of Rules 564 and 574 of the Safety Rules and General Rules, Form 15001, 8/81 on August 28, 1991" was arbitrary, on the basis of unproven charges and in violation of the Agreement.

2. Claimant S. L. Humphries shall be returned to service with seniority unimpaired as Machine Operator at Seattle, Washington or be allowed to exercise seniority over any junior employe in accordance with Rule 21 F of the effective Agreement. We further request that Claimant be paid for all lost time and that he be allowed any and all benefits of which he is presently being deprived including but not limited to health and welfare benefits, vacation and personal leave qualification. We also request that his personal record be cleared of any reference to this discipline.

F I N D I N G S

The Claimant was subject to an investigation hearing under the following charge:

Ascertaining the facts and determining responsibility, if any, in connection with your alleged falsification of two F-27 Reports, Form No. 15016-E, dated August

28, 1991, and two Personal Injury Reports, Form No. 12504-E, dated August 28, 1991, in connection with your alleged injuries on August 28, 1991.

Following the hearing, the Claimant was dismissed from service on October 17, 1991.

During the investigative hearing, the Claimant admitted that he had not suffered an injury on August 28, 1991 and that he had falsely used the name of a fellow employee as a witness to the alleged injury. The Claimant's defense is that the alleged incident had in fact occurred a week earlier, on August 21, 1991, and that he did not believe the incident had caused him injury until some time later.

The Board finds that this explanation, if true, does not explain or excuse the false reporting of an August 28 incident. The Claimant acknowledged that he was fully aware of the need for prompt and accurate reporting of such incidents. Further, with the Claimant's affirmative defense of an earlier incident, it became his responsibility to offer definitive proof. One employee whom the Claimant contended was involved in the earlier incident was available at the hearing as a potential witness, but he was not called for this purpose to support the Claimant's assertions. (The other employee was also present as a representative for still another charged employee, but the hearing officer, at the outset of the hearing, indicated his willingness to have the employee be present in a dual capacity.)

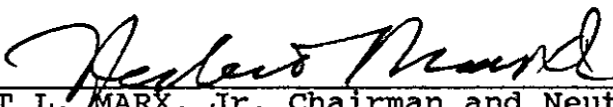
The Organization raises a significant procedural point to the effect that the hearing was prejudiced. This contention concerned

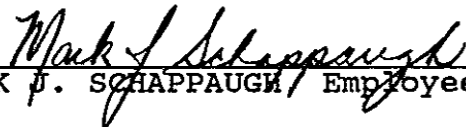
the employee who had been cited by the Claimant as a witness to the alleged August 28 incident. That employee was also a "principal" at the hearing. According to the Carrier, he had previously advised Carrier representatives of the Claimant's part in citing him as a "witness" to the August 28 incident. There is credible testimony to the effect that he had been assured prior to the hearing that he would be assessed only a minimal penalty as a result of the hearing, presumably in exchange for his testimony.

The Board finds that this procedural objection has merit to the extent that testimony by the other employee should be disregarded in assessing the results of the hearing. Nevertheless, the Claimant's own admission is sufficient to support the Carrier's action, particularly in connection with the failure to establish proof concerning an alleged earlier event on August 21.

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: November 2, 1993

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 65

Carrier File No. 1MWB 91-03-25A

Organization File No. S-P-466-W

STATEMENT OF CLAIM

1. The dismissal of Laborer S. L. Humphries for alleged violation of Rules 564, 575 and 580 "in connection with your alleged misappropriation of Burlington Northern assets during the period of May, 1988 through August, 1991" was arbitrary, on the basis of unproven charges and in violation of the Agreement.

2. The Claimant shall be returned to service with seniority unimpaired as Machine Operator at Seattle, Washington or be allowed to exercise seniority over any junior employe in accordance with Rule 21 F of the effective Agreement. We further request that Claimant be paid for all time lost and that he be allowed any and all benefits of which he is presently being deprived including but not limited to health and welfare benefits, vacation and personal leave qualification. We also request that his personal record be cleared of any reference to this discipline.

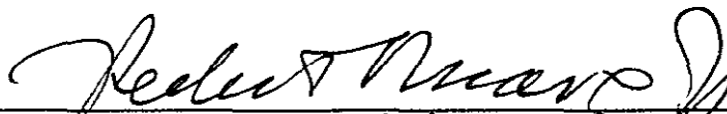
F I N D I N G S

As a result of an investigative hearing on October 23, 1991, the Claimant was dismissed from service by notice of letter dated November 18, 1991.

As reported in Award No. 64, the Claimant was dismissed from service on October 17, 1991 under an entirely separate charge. This dismissal was upheld under Award No. 64. As a result of this, consideration by the Board of the matter here under review would be moot, and no action by the Board is appropriate.

A W A R D

Claim dismissed.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: November 5, 1993