

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6041**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
GENE L. SHIRE, CARRIER MEMBER
DON HAHS, EMPLOYEE MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE**

and

**BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

**Award No. 8
Case No. 8**

*Date of Hearing - October 22, 1997
Date of Award - March 26, 1998*

Statement of Claim:

Claim of Kansas Division Engineer J. M. Minihan, Jr., for pay for all time lost while being withheld from service for the Burlington Northern Santa Fe Railway Company while serving said fifteen days suspension, including pay for time lost attending the formal investigation and that Mr. Minihan's personal record be expunged of any mention of the incident of March 25, 1994.

FINDINGS:

Public Law Board No. 6041, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On March 30, 1994, Claimant was cited to attend an investigation on a charge that he laid off under false pretenses on March 25, 1994. Following that investigation Claimant was assessed discipline of a fifteen day suspension. The Organization has appealed the suspension on the grounds that Carrier failed to prove the charge with any evidence. After review of the investigation transcript the Board is forced to concur with the Organization's assessment of the evidence. There simply is nothing of substance to establish that Claimant was guilty of the charges placed against him.

Carrier's evidence that Claimant laid off under false pretenses is nothing more than innuendo and conjecture. Innuendo and conjecture simply are insufficient to support discipline. Carrier has failed to establish that it was privileged to assess any discipline in this matter. The Claim will be sustained as presented.

The claim has merit. It will be sustained.

A W A R D

Claim sustained.

O R D E R

Carrier is directed to comply with this award and make any payments due Claim within thirty days of the date indicated below.



John C. Fletcher Chairman & Neutral Member



Gene L. Shire, Carrier Member



Don Hahs, Employee Member

Dated at Mt. Prospect, Illinois., March 26, 1998