

SBA No. 1112
BNSF/BMWE
Case No. 25
Award No. 26

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON NORTHERN/SANTA FE

AND

**CASE NO. 25
AWARD NO. 26**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

On July 29, 1998 the Brotherhood of Maintenance of Way Employees ("Organization") and the Burlington Northern/Santa Fe ("Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 1112 ("Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railway Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed, suspended, or censured by the Carrier. Moreover, although the Board consists of three members, a Carrier Member, an Organization Member, and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with provisions of Section 3 of the Railway Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier's service or who have been censured may choose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended, or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

This Agreement further established that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of his/her desire for expedited handling of his/her appeal, the Carrier Member shall arrange to transmit one copy of the notice of the investigation, the transcript of the investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of the proceedings are to be reviewed by the Referee.

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The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified, or set aside, will determine whether there was compliance with Schedule Rule 40; whether substantial evidence was adduced at the investigation to prove the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

In the instant case this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

BACKGROUND FACTS

Claimant was hired by the Carrier in 1977 and has been disciplined on two prior occasions. The first, in 1980, was a censure for failing to comply with instructions and the second, in 1984, was a suspension for the same offense.

Following notice and investigation the Claimant was issued a Level S 20 day record suspension with one year probation for violating BNSF Maintenance of Way Operating Rule 1.13 which provides, in relevant part, as follows:

Rule 1.13 Reporting and Complying with Instructions

Employees will...comply with instructions from supervisor who have the proper jurisdiction...

FINDINGS AND OPINION

On July 17, 2000 the Claimant was serving as a Group II Grader Operator in Alliance, Nebraska. On that morning the Roadmaster asked him to help dump ballast at the Sidney Section in Sidney, Nebraska. In reply, and in an angry tone, the Claimant declined to do so. In reply the Roadmaster said that if the Claimant was not going to perform the assigned task he should go home. At that time the Claimant left the premises. However, on his way home he telephoned the Roadmaster and asked if they could discuss the matter. The Roadmaster however replied that the Claimant could either take a sick day without pay or he would commence an investigation. The Claimant did not claim the sick day and the investigation leading to this matter was undertaken.

The Claimant contends that although he did not comply with the Roadmaster's order he did so in a fashion distinguishable from that described by the Roadmaster. That is, the Claimant, without describing his tone and manner, simply told the Roadmaster that dumping ballast was not a part of his job description and moreover, after he excused

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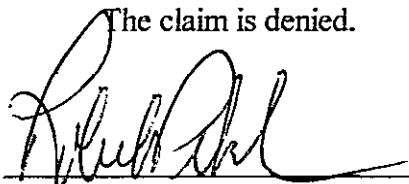
himself to go to the restroom he returned and told the Roadmaster that he would do whatever the Roadmaster wished. The Claimant however, by his own admission, also told the Roadmaster that he believed that they were short of help and that other people should be hired.

We do not find it necessary to resolve this apparent conflict in the description of the incident. The fact of the matter is that the Roadmaster gave to the Claimant an order which was within the scope of his authority and that the Claimant did not comply. Although it is true that the Roadmaster's description of the exchange leads more neatly to the classical form of insubordination, there is no dispute that the Claimant refused to obey the order. Moreover, we are not moved by the Claimant's assertion that he reconsidered his refusal and agreed to perform the task in question. We do not find this conduct compelling because, by the Claimant's own admission, it was accompanied by a remark that was again a challenge to the Roadmaster's legitimate authority.

The Organization's final argument is that nothing in Rule 1.13 precludes an employee from disagreeing with what the Roadmaster says. Although the Organization is correct as a literal matter, we find that Rule 1.13 enshrines the requirement inextricably interwoven in labor-management relations in all contexts that when an employee finds him or herself faced with an order that is legitimate and legal, although one with which the employee disagrees, he or she is to "obey now and grieve later." Clearly, the Claimant did not do so and he therefore violated Rule 1.13.

AWARD

The claim is denied.



Robert Perkovich, Neutral Chair
SBA No. 1112

DATED:

October 27, 2000