

NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT NO. 925

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BURLINGTON NORTHERN RAILROAD COMPANY \*  
\*  
and \* CASE NO. 109  
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\* AWARD NO. 109  
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BROTHERHOOD OF MAINTENANCE \*  
OF WAY EMPLOYES \*  
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On May 13, 1983 the Brotherhood of Maintenance of Way Employees (hereinafter the "Carrier") and the Burlington Northern Railroad Company (hereinafter the "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. 925 (hereinafter the "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 from service. On September 28, 1987 the parties expanded the jurisdiction of the Board to cover employees who claimed that they had been improperly suspended from service or censured by the Carrier.

Although the Board consists of three (3) 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 the 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 chose 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 procedures.

The Agreement further establishes 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 investigation, the transcript of investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of proceedings and are to be reviewed by the Referee.

In the instant case, this Board has carefully reviewed each of the above-described documents prior to reaching findings of fact and conclusions. Under the terms of the Agreement the Referee, prior to rendering a final and binding decision, has the option to request the parties to furnish additional data; including argument, evidence, and awards.

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 the applicable provisions of 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.

#### Background Facts

Mr. Roger F. Pearson, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on June 3, 1970. The Claimant was subsequently promoted to the position of Section Foreman and he was occupying that position when he was dismissed from the Carrier's service on September 24, 1991.

The Claimant was dismissed as a result of an investigation which was held on August 27, 1991 in the Roadmaster's Office in St. Joseph, Missouri. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated Rules 564 and 575 for his alleged falsification of Timeroll 743718 on July 30, 1991 while assigned as a Foreman on Ballasting Gang 02.

### Findings of the Board

The record evidence establishes that between the dates of July 16 and July 26, 1991 Mr. Barry Rose as the Section Foreman on Ballast Gang 02 was responsible for "making out the timeroll" for a crew of employees. Mr. Rose was displaced by the Claimant on the morning of July 27, 1991, and, thereafter, as Foreman, the Claimant was responsible for "making out the timeroll".

Mr. Jerry Nutz, the Assistant Roadmaster with responsibility for Ballast Gang 02, testified regarding the transfer of timeroll responsibilities from Foreman Rose to the Claimant. Mr. Nutz also testified that the Claimant "made out the timeroll" for the Gang, including himself, between the dates of July 27 through July 31, 1991; and that the Claimant showed himself as working eight (8) hours at the straight time rate and one (1) hour at the overtime rate and being entitled to \$45.00 for "board award" expenses for Tuesday, July 30, 1991 when, in fact, the Claimant did not work at all that day as he had been given permission to be absent from duty in order "to go to court that day on a civil matter".

The record evidence establishes that the Claimant made out the timeroll in question on Thursday, August 1, 1991; and that because of a "rush" situation the timeroll had to be "faxed" with copies mailed to the appropriate payroll office that morning.

Mr. Nutz testified that on or about Sunday, August 4, 1991 he discovered that the Claimant had shown himself as working on July 30, 1991. Mr. Nutz testified that he spoke to his supervisor, a Mr. Teahon, and reported that the Claimant "was on the timeroll and that Roger wasn't there that day". Mr. Nutz testified that he did not "confront" the Claimant to discuss this matter.

There is substantial and convincing evidence in this record which establishes that the Claimant did, in fact, list himself on the timeroll for July 30, 1991, showing that he had worked eight (8) hours straight time and one (1) hour overtime and that he was entitled to \$45.00 in so-called "board award" expenses.

During the course of extensive questioning by his

Organization Representative and through his own questioning, as the Claimant has had substantial experience as a Local Chairman and a Legislative Representative for the BMW, the Claimant sought to establish several bases for what he contends was an "innocent" error in making out the timeroll.

At the outset of his direct examination, the Claimant implied that although he made the entries for the other dates in July on the timeroll he was "not sure" if the timeroll entries for July 30, 1991 had been entered in his handwriting. Subsequently, the Claimant, when asked whether the handwriting for the days prior to and subsequent to the July 30, 1991 entry appeared to be "basically the same", responded "it is rough to tell" but "It appears to be, but like I said, it was a big rush that morning and I just totaled it out and handed [the timeroll] to Mr. Nutz."

The Claimant also implied that as the timebook was not within his exclusive possession during the work week in question and as he merely transposed entries from the timebook to the timeroll, it was conceivable or likely that someone else placed time in the timebook attributable to his working on July 30, 1991, and that he merely, by rote, put those numbers down on the official timeroll. The Claimant testified that because of the "rush" in getting the timeroll faxed to the payroll department on the morning of August 1, 1991 his entries for himself for July 30, 1991 were obviously made in error.

The Claimant further testified that as soon as he was notified of the error he attempted to correct it, following the established, written Burlington Northern instructions, but that supervision did not permit the error to be corrected. The Claimant testified that he was first notified of the error when he received the notice of investigation regarding his alleged falsification of timeroll 743-718.

The Claimant testified that he had notified three different supervisors regarding the necessity of his being "off from work" on July 30, 1991; and the Claimant posited that his being absent on that day was no "secret", and therefore he would not have attempted or intended to steal time from the Carrier in such obvious circumstances.

In further explanation for what the Claimant contends was an innocent error, the Claimant pointed out that he had been

working for ten (10) consecutive days, and had been receiving substantial overtime hours and expenses for each of the days he worked during the last two weeks in July. Therefore, the Claimant asserted that entering time on July 30, 1991 was not a purposeful falsification.

In further support of his contention that he did not intend to falsify his timeroll, the Claimant pointed out that he never received a check containing the overpayment, and therefore he never was paid for work or expenses that he did not perform or to which he was not entitled.

There is some extraneous matter in the transcript regarding the Claimant's furnishing Organization Representative Kosman with timerolls, involving the dates in question, so that the Organization could explore the possibility of filing a grievance unrelated to the Claimant but involving another member of the Gang. All of the testimony regarding this subject matter is totally irrelevant to the charge and the discipline and has not been considered by the Board.

Representative Kosman, who has worked in the same general territory as has the Claimant, testified regarding two prior circumstances where errors made on his timeroll were corrected and no discipline was imposed as a result of those errors.

The Carrier has presented substantial and convincing evidence that the Claimant knowingly entered incorrect information on his timeroll for July 30, 1991. Having done so, the burden of proof shifts to the Claimant and requires him to prove that he was not responsible for an offense which would subject him to discipline. The Carrier was justified in discounting the Claimant's contentions that the "rush" of faxing the timeroll and that the possibility that someone else had listed straight time hours and overtime hours in the timebook attributable to him for July 30, 1991 were the causes of what he argues was an innocent error. The Carrier had the right to determine that the Claimant's explanations were not credible; particularly in view of the fact that the timeroll was completed only one full day after the Claimant had been previously absent with permission.

Contributing to this Board's conclusion that the Carrier had just and sufficient cause for issuing the discipline is the fact that the Claimant not only listed the standard eight

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(8) straight time hours on the timeroll, but he made a separate and subjective entry for the amount of overtime he allegedly worked just one full day prior to his making out the timeroll. It is understandable why the Carrier could not credit the Claimant's explanation that his "innocent error" was attributable to the rush to complete the timeroll.

The fact that the Claimant did not receive improper pay for time not worked does not detract from the seriousness of the offense. The Claimant submitted a "false" timeroll, and the fact that the Carrier "caught" the error before the Claimant received pay and expenses to which he was not entitled does not absolve the Claimant from blame.

The circumstances in the two incidents testified to by Representative Kosman are distinguishable; since in neither of those cases did Mr. Kosman, himself, file timerolls in which he sought pay or expenses to which he was not entitled.

While the Board was impressed with the lengthy, articulate closing statement made by the Claimant's Representative, the excuses raised by the Claimant for the error cannot result in a finding that the Claimant did not seek pay and expenses for time which he should have known he did not work.

Based upon the foregoing findings, the Board must deny the claim. The offense is sufficiently serious that the Board cannot conclude that the penalty of discharge was arbitrary or overly severe.

Award: The claim is denied. This Award was signed this  
20th day of March, 1992.

Richard R. Kasher  
Richard R. Kasher  
Chairman and Neutral Member  
Special Board of Adjustment No. 925