

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925
Case/Award No. 142

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Case/Award No. 142

On May 13, 1983 the Brotherhood of Maintenance of Way Employees (hereinafter the Organization) 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 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 procedure.

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. William Edward Anton, hereinafter the Claimant, entered the Carrier's service as a Laborer on June 16, 1975, resigned on October 2, 1978 and was rehired as a new employee on April 10, 1979 as a Sectionman. The Claimant was subsequently promoted to the position of Machine Operator and he was occupying that position when he was suspended from the Carrier's service for five days commencing on October 19, 1992.

The Claimant was suspended as a result of an investigation which was held on September 21, 1992 in the Carrier's conference room in Seattle, Washington. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant based upon its findings that he had violated certain notices and rules regarding the wearing of safety equipment.

Findings and Opinion

This is the third in a trilogy of cases involving members of Steel Gang RC03 who were working in the vicinity of Goldbar, Washington on August 11, 1992, and who, while failing to wear required safety protective equipment, were observed by a safety audit team member.

The Claimant in this case was operating a "Zapper or Spiker", and by the testimony of Roadmaster Jeffrey Owen he, the Claimant, as well as other employees subject to Roadmaster Owen's supervision had been required to wear hard hats and safety glasses "at all times while they're out working, while they're on duty".

Again, the Carrier has chosen to credit the testimony of Safety Manager Thompson and has concluded that the Claimant failed to wear safety equipment for a period of time that he was "working around" his machinery and at a time that he could have worn that equipment because he was not under the equipment engaged in servicing/maintenance of that machinery. Mr. Thompson testified that the Claimant should have been able to wear his hard-hat and safety glasses during the "four or five minutes [he was observed] prior to [his] putting on the hard hat and safety glasses".

Roadmaster Owen testified, as he did in Case Nos. 140 and 141 decided by this Board, that Claimant Anton, like Claimants Noel and Williams, was a "good" and "safety conscious" employee. In spite of that fact, the Carrier, in reviewing the transcript, determined that the Claimant should be suspended for five days, a period previously noted by this Board as being particularly onerous in terms of lost pay for a seasonal employee.

Nevertheless, this Board, for the reasons stated in Award Nos. 140 and 141, is not prepared to substitute its judgment for that of the Carrier in this case and to modify the discipline. Accordingly, the claim will be denied.

Award: The claim is denied. This Award was signed
this 20th day of April, 1993.



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