

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925
Case/Award No. 177

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Case/Award No. 177

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. Joe G. Goldade, hereinafter the Claimant, entered the Carrier's service as a Laborer on April 29, 1969. The Claimant was subsequently promoted to the position of B&B Foreman and he was occupying that position when he was suspended from the Carrier's service for sixty days effective October 5, 1993 and had his foreman's seniority restricted for the duration of his employment for his alleged absenteeism and falsification of timeroll 254-161 for various dates in June and July, 1993.

The Claimant was suspended and restricted as a result of an investigation which was held on September 14, 1993 in the Carrier's Depot in Selz, North Dakota. At the investigation the Claimant was represented by the Organization. The Carrier suspended and restricted the Claimant based upon its findings that he had violated Rules 530, 550 and 570 and forms 15001 and 15125.

Findings and Opinion

Mr. Mark James, B&B Supervisor with jurisdiction over the Claimant, testified that on the evening of August 2, 1993 he was contacted by a member of the Claimant's crew who advised him that for several days the crew had "come into their headquarters point early and had been told to go home" by the Claimant, and that this individual and other crew members were "feeling uncomfortable with this". Supervisor James testified that he solicited written reports regarding the crew's concern, and that he received such reports from crew members Rick Randall and Rod Fonder.

These reports/diary entries were sponsored by Messrs. Randall and Fonder and they, as well as other members of the Claimant's crew, testified, to the best of their recollection, of their work responsibilities and the extent to which they were released early by the Claimant on June 17 and July 8, 13, 15, 21, 22 and 29, 1993.

During the relevant time frame the Claimant and the members of his crew were scheduled to work four consecutive ten hour days Mondays through Thursdays.

The collective testimony of the members of the Claimant's crew, which the Carrier has chosen to credit, establishes that on various dates the Claimant (1) did not accompany his crew to their assigned work sites, (2) was not found in the vicinity of the headquarters point from which the crew was assigned, (3) released the crew several hours early, (4) did not have any programmed work available for the crew, and (5) on one occasion instructed the crew to "hide the truck", which they did at the home of a fellow employee who was on vacation.

The Claimant denied each of the factual allegations regarding his alleged dereliction of duty.

Those denials establish the crux of this case; that is, a question of credibility.

In the Claimant's defense the Organization has raised a variety of contentions; none of which, individually or collectively, persuade this Board that the Carrier did not have cause to discipline the Claimant.

First, the Organization submits that the notice of investigation was not sufficiently specific and thus violated Schedule Rule 40's requirement of "precise charges". The Board rejects that argument because the notice notified the Claimant of the specific dates upon which he was alleged to have absented himself from work without authority and falsified a particular timeroll. While the notice could have been more specific by recounting some of the allegations in the written reports provided to Supervisor James, such as the "hiding of the truck" charge, the fact remains that the Claimant and the Organization had sufficient notice to mount an adequate defense. In any event, the Claimant's blanket denials that he was derelict in any of his responsibilities would not, apparently, have changed if the notice was more specific.


Secondly, the Organization argues that foremen, on occasion and with some regularity, do not accompany their crews/gangs to an assigned work site, and, therefore, there is no merit in the Carrier's conclusion that the Claimant violated any rules or procedures required of foremen, when he did not accompany his crew. That argument should also be rejected, because the Carrier was entitled to conclude, based upon the collective testimony in the record, that the Claimant exercised minimal, if any, supervisory authority over his crew during numerous days listed in the notice. Additionally, the Carrier could conclude, based upon this same evidence, that the Claimant's crew was regularly released from any responsibility several hours prior to the conclusion of their assigned work day on multiple occasions and yet the Claimant showed them on the timeroll as being entitled to ten hours pay for each of those days.

The Organization has also argued that the members of the Claimant's crew were responsible, if in the fact the Claimant was derelict in his duties, to make the report more timely. It is not common for employees to report their foreman for dereliction of duty; and it is understandable why the members of the Claimant's crew may not have felt comfortable in reporting the Claimant after the first or second instance when he released them early from work, since they could have reasonably believed that this circumstance was aberrant. However, after the fifth or sixth time that they were released early from work and after they were told to "hide the truck", their level of discomfort rose to the point that they felt obligated to report the incident. The members of the Claimant's crew are not under investigation, and the Organization Representative cannot deflect the proper light of inquiry by focusing upon innocent members of the craft or class.

The Claimant has not contended nor has he provided any evidence which would establish that the members of his crew harbored any anti-Claimant animus or were motivated to fabricate their concerns/complaints.

Based upon the foregoing findings, it is this Board's conclusion that the Carrier had the right to believe the collective testimony of the members of the Claimant's crew, and conclude that, on several of the dates in question, the Claimant was derelict in his responsibilities as a foreman and violated the various rules cited. It is this Board's further finding that the discipline imposed by the Carrier was neither arbitrary nor overly severe, and therefore the claim will be denied.

Award: The claim is denied. This Award was signed this 5th day of April, 1994.



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