

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

BURLINGTON NORTHERN RAILROAD COMPANY
- and -
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 25
AWARD NO. 25

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 is limited to disciplinary disputes involving employees dismissed from service. 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 are dismissed from the Carrier's service may chose to appeal their dismissals to this Board. They have a sixty (60) day period from the date of their dismissals to elect to handle their appeals through the usual channels (Schedule Rule 40) or to submit their appeals directly to this Board in anticipation of receiving expedited decisions. An employee who is dismissed 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 dismissed 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 dismissal and the dismissed 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. Kevin J. Vaughn, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on June 27, 1979. The Claimant was subsequently promoted to Truck Driver and he was occupying this position when he was dismissed from the Carrier's service effective November 27, 1985. The Claimant was dismissed as the result of an investigation which was held on November 5, 1985 in Reno, Wyoming. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated Rules 565 and 566 of the Carrier's Safety and General Rules, by being under the influence of alcohol and drugs while working as a Truck Driver on September 21, 1985.

Findings and Opinion

On September 21, 1985 the Claimant was involved in an accident while driving a Carrier truck to Reno, Nevada. Mr. John M. Solano, Regional Roadmaster, arrived at the scene of the accident and drove the Claimant to Gillette. Mr. Solano reported the accident to his superintendent, Mr. Joe Arrington, and was requested to take the Claimant to Campbell County Memorial Hospital for a urinalysis, which he did.

Two days later, on September 23, 1985, Mr. Gary K. Steeves, Special Agent, transported the Claimant's urine sample from Campbell County Hospital to Western Pathology Consultants in Scottsbluff, Nebraska for testing.

On September 25, 1985 the Carrier received the results from Western Pathology. The results showed that the Claimant tested positive for marijuana and that his alcohol level was at .14 g%. The Carrier then determined that based upon the test results the Claimant would be removed from service.

After thoroughly reviewing the record, this Board concludes that the Claimant did, in fact, violate Carrier rules. The Claimant specifically violated Safety Rule 566 which states in part that "Employees must not report for duty under the influence of any alcoholic beverages, intoxicant, narcotic, marijuana or other controlled substance. . ."

The Claimant admitted that he violated Rule 566. The following question and answer appears at page 21 of the transcript:

"Q. Did you comply with those instructions on September 21st, 1985?"

A. According to the way it is ruled, no."

This exchange occurred directly after Rule 566 was read to the Claimant and he stated that he understood the provisions of the rule.

State law in Wyoming considers a person with a urine alcohol reading of .10 to be intoxicated. The Claimant's testing showed a .14 content. He was clearly "over the limit" on September 21, 1985.

The record further establishes, without contradiction, that the Claimant's urine sample had not been tampered with and that the "chain of custody" procedures had been thoroughly followed. Accordingly, the Board shall deny the claim.

Award: The claim is denied in accordance with the above findings.

This Award was signed this 18th day of January 1986 in Bryn Mawr, Pennsylvania.

Richard R. Kasher

Richard R. Kasher
Chairman and Neutral Member
Special Board of Adjustment