

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

<u>BURLINGTON NORTHERN RAILROAD COMPANY</u>	*	
	*	
-and-	*	CASE NO. 3
	*	AWARD NO. 3
<u>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES</u>	*	

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 Section 3 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 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 choose to appeal their dismissals to this Board, and they have a sixty (60) day

period from the date of their dismissals to elect to handle their appeals through the usual appeal channels, under Schedule Rule 40, or to submit their appeals directly to this Board in anticipation of receiving expedited decisions. The employee who is dismissed may elect either option, but 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's written notification of his/her desire for expedited handling of his/her appeal is received by the Carrier Member of the Board, that said 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 had the option to request the parties to furnish additional data regarding the appeal, in terms of argument, evidence, and awards, prior to rendering a final and binding decision in the instant case. 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 excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

Under paragraph 5 of the May 13, 1983 agreement the Referee must agree, as a condition of the assignment, to render an award in each dispute submitted within sixty (60) days of the date the documents specified above are received. The sixty (60) day period may be extended when funding of the dispute resolution procedures under Section 3 of the Railway Labor Act are suspended.

Mr. K. E. Fay, the Claimant, was dismissed from service on September 14, 1983 as the result of an investigation held on August 31, 1983. The documents of record, including a seven page transcript, were received by the Referee on November 5, 1983, and this Award was rendered on December 7, 1983.

Findings and Award

On August 25, 1983 at approximately 11:15 a.m., the Claimant approached his direct supervisor, the Roadmaster at Beardstown, to ask permission to leave the job site because he, the Claimant, had been drinking since the prior evening, and, as a result, Claimant was under the influence of alcohol.

The record is clear and uncontroverted that the Claimant was under the influence of alcohol in violation of the Carrier's Rules.

A review of the Claimant's prior record discloses that he began employment with the Carrier on May 3, 1983. With more

than twenty (20) years service, the Claimant maintained an unblemished disciplinary record.


At page six of the transcript, evidence infers that the Claimant has an alcoholic dependency and that he, the Organization and the Carrier are taking steps to address this problem through the Employee Assistance Program.

AWARD:

This Board will sustain the Carrier's disciplinary action but will convert the dismissal to an indefinite suspension subject to the Claimant's satisfactory recovery from his alcoholic dependency.

The Carrier will restore the Claimant to service when its Employee Assistance Officer and medical personnel have proof and are satisfied that the Claimant is physically capable of returning to service without jeopardy to the safety of himself, his fellow employees, and the Carrier's proprietary interests. Claim denied in accordance with the above Findings.

This Award was signed the seventh day of December, 1983 in Bryn Mawr, Pennsylvania.


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