

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

<u>BURLINGTON NORTHERN RAILROAD COMPANY</u>	*	
	*	
-and-	*	CASE NO. 5
	*	AWARD NO. 5
<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. Daniel L. Rundle, the Claimant, who entered service with the Carrier on June 28, 1976, was dismissed from service on September 28, 1983 as the result of an investigation held on September 6, 1983. The documents of record including a 121-page transcript, were received by the Referee on November 14, 1983, and this Award was rendered on January 12, 1984.

Findings and Award

On Sunday, August 28, 1983 the Claimant was assigned as Assistant Foreman on Regional Steel Gang 952 at Wymore, Nebraska. The Claimant and two fellow employees, Truck Drivers, D. L. Brass and M. H. Poppen were assigned to ferry two buses to Alliance, Nebraska.

During their trip, the Claimant and Poppen (who was driving one of the buses; the Claimant was driving a pick-up truck in order to return drivers Poppen and Brass back to Wymore) were separated from fellow driver Brass. When the Claimant and Driver Poppen arrived at Alliance, they found Employee Brass' bus in the yard but could not find Mr. Brass.

Subsequently, it was determined that an investigation was being conducted by Carrier operating and security personnel as they had found certain narcotic paraphernalia and marijuana


among employee Brass' possessions. In the same room that this investigation was taking place, the Claimant was charged with being under the influence of alcohol.

The transcript of proceedings in this case is identical with the transcript reviewed by this Board in Case No. 1, which involved Truck Driver Poppen. A thorough review of that transcript indicates that the Carrier was entitled to rely upon the eyewitness testimony of two of its officials who observed the Claimant and testified that they smelled alcohol on his breath. The Carrier had the right to credit this testimony and to therefore conclude that the Claimant was on Carrier premises and under the influence of alcohol.

In these circumstances, this Board finds no basis upon which to overturn the Carrier's determination that discipline should be assessed or to modify the discipline imposed. Accordingly, the claim will be denied.

AWARD: Claim denied.

This Award is signed this 12th day of January, 1984 in Bryn Mawr, Pennsylvania.


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