

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

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*****
BURLINGTON NORTHERN RAILROAD COMPANY          *
- and -                                         *
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES    *
*****                                         *
                                           CASE NO. 54
                                           AWARD NO. 54
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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. Harry J. Ryan, hereinafter the Claimant, entered the Carrier's service as a Laborer on March 21, 1977. He was subsequently promoted to the position of Welding Foreman, and he was occupying that position when he was issued a five (5) day suspension from service by the Carrier on July 1, 1988.

The Claimant was suspended as a result of an investigation which was held on June 14, 1988 in St. Louis, Missouri. At the investigation the Claimant was represented by the Organization. The Carrier issued a five (5) day suspension to the Claimant based upon its findings that he had violated Rule 378 of the Burlington Northern Railway Safety Rules and General Rules by allegedly failing to promptly report an accident with BN vehicle 8387 which occurred at about 1320 hours on May 23, 1988 on I-70 Missouri River Bridge, while he was assigned as Foreman of Joint Elimination Gang #10 headquartered at North St. Louis.

Findings and Opinion

The Claimant was working as Foreman of Joint Elimination Gang #10 on May 23, 1988 when, at approximately 1:20 p.m., BN vehicle #8387, in which he was a passenger, was involved in an accident.

Roadmaster R.O. Hiam testified that he was not notified of this accident until approximately 8:15 a.m. on May 24, 1988. He further testified that he received this notification from the Section Foreman at North St. Louis and that no member of Joint Elimination Gang #10 had informed him of the vehicle accident.

The Claimant testified that he attempted to contact Roadmaster Hiam sometime before 6:00 p.m. on the evening of May 23, 1988 but that he was unsuccessful. He also testified that since he was experiencing back pain he left word for the driver of BN vehicle #8387, a Mr. Cox, to contact Roadmaster Hiam on the morning of May 24, 1988.

Rule 378 of the Burlington Northern Safety Rules and General Rules states:

"An accident, no matter how trivial it may appear, and no matter whom the driver believes to be at fault, must be reported immediately to supervisor or superior officer and local and state authorities as required."

The question before this Board is whether the Claimant violated that Rule. The answer must be an unequivocal yes.


The Claimant, as Foreman of Joint Elimination Gang #10, was clearly responsible to see that his supervisor, Roadmaster Hiam, was informed of the accident in a prompt manner; and, if his Supervisor was not available, then the Rule, and good common sense, requires the Claimant to notify a "superior officer". It is inconceivable that the Claimant could not have contacted an officer of the Carrier to report the accident in a timely fashion.

The Carrier has a justifiable "need to know" when either its equipment or personnel are involved in accidents. This need to know is particularly critical in this case since the Claimant alleges that he sustained a personal injury, albeit the injury was not disabling to the point that the Claimant would have been unable to exercise reasonable efforts to notify the Carrier of the incident. The Claimant's delay in informing supervision adversely affected the Carrier's ability to quickly and thoroughly investigate the cause of the accident and its results.

The Organization's argument that the Claimant was unable to meet his obligations under Rule 378 because he did not know Supervisor Hiam's home telephone number is somewhat contrived, and fails to address the underlying issue of why the Claimant did not ensure that a responsible Carrier official was given notice of the accident at a time proximate to its occurrence. The accident occurred in the early afternoon and the Claimant, with reasonably diligent efforts, could have contacted his Supervisor during the working day.

In light of the foregoing findings, and based upon our conclusion that the discipline imposed was neither arbitrary nor overly severe, the claim will be denied.

Award: The claim is denied. This Award was signed this
21st day of September 1988 in Bryn Mawr,
Pennsylvania.


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