

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

CASE NO. 91

AWARD NO. 91

On May 13, 1983 the Brotherhood of Maintenance of Way Employees (hereinafter the "Carrier") 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 (3) 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 procedures.

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. Michael E. Long, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on July 21, 1975. The Claimant was subsequently promoted to the position of Machine Operator and he was occupying the position of Section Laborer when he was suspended by the Carrier for approximately thirty (30) days on October 19, 1990.

The Claimant was suspended as a result of an investigation which was held on September 26, 1990 in the Carrier's depot in Alliance, Nebraska. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant based upon its findings that he had absented himself from duty without proper authority on September 10, 11, 12, 13 and 14, 1990 while he was assigned as a Laborer on Maintenance Gang 978 at Alliance, Nebraska.

Findings of the Board

The record before the Board is reasonably straightforward and the relevant facts are undisputed.

Mr. James B. Mashek, who was the Claimant's Foreman on Maintenance Gang 978 during September, 1990, testified that the Claimant failed to appear for work between the dates of

September 10 and 14, 1990 and that the Claimant failed to call in to report himself off work.

The Claimant testified that he was absent from work on the dates in question because the transmission of his vehicle "was bad", and that he did not call in to report off because "I do not have a telephone at my place where I live five (5) miles out in the country".

It is clear from the evidence of record that the Claimant made no effort to appear for work or to contact appropriate authority that he was unable to appear for work between the dates of September 10 and 14, 1990. The Claimant candidly admitted that he had violated Rule 570, which provides, inter alia, that employees must report for duty at the designated time and place.

While the Organization has pointed out that the Claimant's failure to comply with Rule 570 may have been caused, in whole or in part, by an alcohol dependence problem, the only evidence before the Board establishes that the Claimant violated Rule 570 without any justifiable or mitigating reason.

In these circumstances the Board concludes that discipline was appropriate, and in view of the fact that the Claimant's Personal Record reflects several past violations of Rule 570, the Board further concludes that the measure of discipline was neither arbitrary nor overly severe. Accordingly, the claim will be denied.

Award: The claim is denied. This Award was signed
this 5th day of February 1991.

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