

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1112**

BURLINGTON NORTHERN SANTA FE

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CASE NO. 104
AWARD NO. 105
CLAIMANT: J. S. BUMPOUS**

On July 29, 1998, the Brotherhood of Maintenance of Way Employees ("Organization") and the Burlington Northern Santa Fe ("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. 1112 ("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, suspended, or censured by the Carrier. Moreover, 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 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 choose 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.

This Agreement further established 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 the investigation, the transcript of the investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of the proceedings and are to be reviewed by the Referee.

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 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.

In the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

The Carrier hired Claimant Jeffrey S. Bumpous on or about April 28, 1993 as a Carman. At the time of the incidents leading to the instant Discipline, Claimant was assigned to Maintenance on a Mobile Gang, working as a Grinder Operator. Prior to the incidents leading to the instant Discipline, Claimant had no recordable disciplines.

At approximately 1:20 p.m. on Friday, March 22, 2007, Assistant Roadmaster Kristopher Harris was on his way home for lunch in Brandon, South Dakota. As he passed the Comfort Inn in Sioux Falls, he noticed a Carrier Vehicle in the parking lot. That vehicle was reserved to Claimant and another employee. Harris was of the belief that the occupants of the vehicle were still on duty. Harris determined that the employees were not on vacation that day. An investigation was initiated regarding the incident.

By letter dated March 26, 2007, the Carrier notified Claimant that he was to attend a formal Investigation "... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged falsification of payroll on Thursday, March 22, 2007 while assigned as a Grinder Operator ... working on the Marshall Subdivision." After a number of postponements, the Hearing took place on July 11, 2007. Pursuant to that Investigation, on August 8, 2007 Claimant was notified that he was issued a Level S Suspension for violation of Rules 1.6 (Conduct), 1.13 (Reporting and Complying with Instructions) and 1.15 (Duty-Reporting or Absence). Claimant was suspended for a period of 30 days. In addition, he was required to "... go around the Division on 4 Roadmaster's territories and communicate that employees are not allowed to trade overtime for an early quit". By notice dated September 6, 2007, Claimant exercised his right to appeal the decision to Special Board of Adjustment 1112.

According to the Organization, the Discipline imposed upon Claimant was harsh and excessive. The Organization contends that the burden of proof in a discipline matter such as this is on the Carrier; that burden of proof has not been met. The Organization claims that the Carrier has abused its discretion and that the Carrier's determination to discipline Claimant was based on inconclusive evidence. The Organization contends that he had worked, but had not been paid for overtime on a previous occasion and chose to leave work early on March 22, 2007 in exchange for his unpaid overtime. There was no violation. The Organization asserts that the Carrier should now be required to overturn Claimant's Discipline and make Claimant whole for all losses. Conversely, the Carrier takes the position that it has met its burden of proof. Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. According to the Carrier, Claimant was guilty as charged. While it may be true that Claimant had worked overtime, Claimant had not been authorized to leave work early on March 22 and was in direct violation of the Rules of Conduct. Based on Claimant's offense, a Level S Discipline is the appropriate penalty.

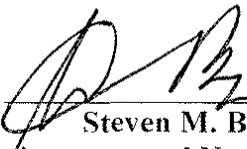
In discipline cases before this Special Board of Adjustment, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is limited to the question of whether the discipline assessed should be upheld, modified, or set aside. This Board must determine whether there was compliance with 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.

After a review, this Board has found substantial evidence in the record to sustain the Carrier's position. The Carrier has proven that Claimant did violate the Rules of Conduct on March 22, 2007 when Claimant left work early. He did not have permission to do so and thus was in violation of the Rules cited. Based on the offense, this Board cannot find the penalty to be unreasonable and will not overturn said Discipline.

Claim denied.

AWARD

Claim denied.



Steven M. Bierig
Chairperson and Neutral Member
S.B.A. 1112

Dated 6/10/08