NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

BURLINGTON NORTHERN RAILROAD COMPANY	
and	CASE NO. 113
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	AWARD NO. 113

On May 13, 1983 the Brotherhood of Maintenance of Way Employes (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. Norman Earl Wright, hereinafter the Claimant, entered the Carrier's service as a B&B Carpenter Helper on September 1, 1953. The Claimant was subsequently promoted to the position of Assistant B&B Foreman and he was occupying that position when he was suspended for thirty (30) days from the Carrier's service on October 10, 1991.

The Claimant was suspended as a result of an investigation which was held on September 10, 1991 in the Ceco Building in Cicero, Illinois. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant based upon its findings that he had violated Rules 563 and 564 for his alleged disregard of safety and careless discharge of duty at approximately 1100 hours, July 25, 1991, in Ceco Building, Cicero, Illinois, which resulted in the personal injury of B&B Truck Driver O.D. Munson.

Findings of the Board

The facts of record and the testimony of the Principals in this case and in Case No. 112, the decision issued contemporaneously this date involving Claimant O.D. Munson, are identical. Both the Claimant and Mr. Munson were subject to the same investigation and the relevant portions of their testimony have been related in the Findings of the Board in Case No. 112. Accordingly, the Board will not repeat any rendition of the relevant facts in the body of this Opinion, but commends the reader to reference Case No. 112 in terms of the background of this claim.

In Case No. 112 this Board made reference to the fact that there was some implication raised by the Carrier that there had been an "altercation" involving the Claimant and Mr. Munson. "Altercation" has been defined as a "heated and noisy quarrel"; and as the facts establish, there was no such interaction between the Claimant and Mr. Munson. This Board concluded that Mr. Munson was not guilty of being careless or unsafe in the discharge of his duty. The Claimant was; as there is no doubt that he "jerked" or "grabbed" the box out of Mr. Munson's possession, and that act, in and of itself, whether it caused injury to Mr. Munson or not, was properly considered by the Carrier to be either careless and/or unsafe. It should be noted that when the Claimant followed Mr. Munson into the elevator they were in a confined space and any physical "confrontation", even one as "grabbing" a package out of another's hands, had the potentiality for injury.

Based upon the foregoing findings, this Board concludes that the Carrier had just and sufficient cause to discipline the Claimant. This Board further concludes that the discipline was neither harsh nor arbitrary. Accordingly, the claim will be denied.

Award: The claim is denied. This Award was signed this 20th day of March, 1992.

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