

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925
Case/Award No. 141

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Case/Award No. 141

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. John S. Williams, hereinafter the Claimant, entered the Carrier's service as a Sectionman on October 5, 1988. The Claimant was subsequently promoted to the position of Machine Operator and he was occupying that position when he was suspended from the Carrier's service for five days commencing on September 14, 1992.

The Claimant was suspended as a result of an investigation which was held on August 19, 1992 in the Roadmaster's Office in Everett, Washington. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant based upon its findings that he had violated certain notices and rules regarding the wearing of safety equipment.

Findings and Opinion

For all practical and evidentiary purposes this case is identical to the matter contained in Case No. 140 decided by this Board. The only differences are (1) the fact that the Carrier's Safety Representative on the Audit Team was John Weber and not Wesley Thompson, (2) the fact that the Claimant here was observed working on or around maintenance of way equipment without wearing his safety glasses and his hard hat, while the Claimant in Case No. 140 only failed to wear his safety glasses when he was observed by the Safety Audit Team and (3) the fact that the Claimant was operating a Super Bee Spiker while the Claimant in Case No. 140 was working with a Pettibone Speed Swing.

The probative evidence of record, after careful analysis, establishes that the Claimant was observed working on or about his machine and not wearing required safety protective devices; and that the Claimant understood or should have understood that he was required to comply with the Pacific Division General Manager's notices which required that such equipment be worn.

The Carrier was entitled to conclude that Safety Manager Weber's observations were accurate and that his testimony was credible, and to determine that some form of discipline should issue.

As stated in Award No. 140 of this Board, the Chairman does not believe that the discipline should be modified, although it would appear that a more enlightened approach and advance warning to employees should have been taken regarding the amount discipline which would flow from failure to abide by the subject notices.

Award: The claim is denied. This Award was signed
this 20th day of April, 1993.

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