

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

BURLINGTON NORTHERN RAILROAD COMPANY
- and -
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 28
AWARD NO. 28

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 is limited to disciplinary disputes involving employees dismissed from service. 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 are dismissed from the Carrier's service may chose to appeal their dismissals to this Board. They have a sixty (60) day period from the date of their dismissals to elect to handle their appeals through the usual channels (Schedule Rule 40) or to submit their appeals directly to this Board in anticipation of receiving expedited decisions. An employee who is dismissed 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 dismissed 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 dismissal and the dismissed 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. P.F. Connors, hereinafter the Claimant, entered the Carrier's service as a Laborer on December 20, 1960. The Claimant was subsequently promoted to the position of Section Foreman, and he was occupying this position when he was dismissed from the Carrier's service effective December 27, 1985. The Claimant was dismissed as the result of an investigation which was held on December 16, 1985 in Albany, Oregon. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated Rules 564, 574 and 575 of the Carrier's Safety and General Rules, by falsifying the payroll on November 5, 6 and 7, 1985.

Findings and Opinion

The Claimant, who in his position as Section Foreman was in charge of keeping time for himself and employees under his jurisdiction at Albany, Oregon, did not report for full day's work on November 5, 1985 and did not report at all on November 6 and 7, 1985, but did list himself as working eight (8) hours on all three of the days.

On December 2, 1985, Special Agent Willard E. Cleland received a telephone call from Mr. Ray Motley, Assistant Section Foreman in Albany, Oregon. Mr. Motley reported that he had worked the position of Section Foreman on November 5, 6 and 7, 1985 due to the absence from work of the Claimant. He had not, however, been paid the Foreman's rate as the Claimant was shown on the payroll for the days in question. Mr. Motley also stated that the Claimant had advised him

that he intended to take personal leave days for November 6 and 7, 1985.

On December 4, 1985, the Claimant was interviewed about this discrepancy in the payroll sheets. He stated that he "laid off in lieu of overtime worked prior to these dates and in line with past agreement with Roadmaster Harkless".

When questioned on the matter, Roadmaster J.L. Harkless advised his supervisors that he had no agreement with the Claimant to take compensatory time in lieu of being paid overtime. He further stated that the Claimant had advised him that he was going to take personal leave for two of the days.

The collective bargaining agreement provides that employees will be granted a number of personal leave pay days per year based upon their seniority. The Claimant was entitled to two (2) personal leave days. Although it is clear from the evidence that the Claimant did have a personal leave form and that he was knowledgeable about the correct procedures to be followed in taking personal leave days, there is no dispute in the record that the Claimant did not list November 6 and 7, 1985 on the time sheets as personal leave days nor did he fill out the appropriate form.

This Board is not convinced that the Carrier has proven that the practice of taking compensatory time in lieu of pay for overtime as had been established by former Roadmaster Harkless had been totally abandoned. Thus, had the Claimant been able to prove that the three (3) days he took off from work were compensatory time days in lieu of overtime previously performed we might find that he had not "falsified" his records. However the Claimant was not able to prove that he was owed three (3) days of compensatory time, even though he stated that he had such records in a "personal note book" to support his contention. The Claimant was given every opportunity to provide that documentation and he did not.

More importantly, the Claimant's testimony is inconsistent and is refuted by the testimony of Mr. Motley and Mr. Harkless. They both testified that the Claimant had told them that he was taking two personal leave days. Significantly, personal leave is paid out of a separate account. The Claimant's failure to properly note that he was taking personal leave on November 6 and 7, 1985 and his failure to complete the requisite forms would serve to maintain his two day credit for such leave in the Carrier's payroll department. Thus there is no other conclusion but that the Claimant knowingly took personal leave time to which he was entitled, but listed it as straight time pay. This listing improperly "saved" his two personal leave days and would result in his taking two days from the Carrier.

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In these circumstances the Carrier proved knowing falsification of the payroll and because of the seriousness of the offense, the penalty of dismissal will not be considered arbitrary. Claim denied.

Award The claim is denied in accordance with the above findings.

This Award was signed this 11th day of February 1985 in Bryn Mawr, Pennsylvania.

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