

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. 31

AWARD NO. 31

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. Arkley A. Mines, hereinafter the Claimant, entered the Carrier's service as a B&B Helper on January, 16 1978. He was subsequently promoted to Equipment Maintainer and was occupying this position when he was dismissed from the Carrier's service effective January 13, 1986. The Claimant was dismissed as a result of an investigation which was held on January 6, 1986 in Vancouver, Washington. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated Rules 574, 575, and 576 for failing to comply with instructions from his supervisor and withholding information.

Findings and Opinion

The Carrier instituted a safety incentive award at the Vancouver Work Equipment Shop where the Claimant was employed. Employees who were not involved in accidents during a calendar quarter had their names placed in a hat and the employee whose name was drawn was entitled to purchase safety boots/shoes at the Carrier's expense.

This program had been in effect for approximately two years when the Claimant's name was drawn sometime in November of 1985. This was the first drawing in which the Claimant was the "winner" of the safety award. The Claimant sought to purchase boots at the Red Wing Store, however, he was unsuccessful as there were no boots that fit him. The Claimant advised his supervisor of this fact and he received permission to purchase boots at GI Joe's. The Claimant was again unsuccessful so he proceeded to Scappoose and he was fitted for a pair of boots at the Westco Shoe Company. The Carrier was advised, apparently by the proprietor of the Westco Shoe Company, that the Claimant had been fitted for and had ordered a pair of boots which would cost approximately \$150. The Claimant's supervisor had the order cancelled because he viewed the cost as excessive. Approximately two weeks later when the Claimant was on the property he was advised that the Carrier had disapproved his purchase of boots from Westco. The Claimant conferred with his supervisor, Mr. J.C. Johnson, and was advised that there was a \$100 limit for the purchase of boots/shoes. The Claimant then purchased two pairs of boots/shoes from an establishment doing business as Jower's.

When the Carrier discovered that the Claimant had purchased more than one pair of shoes/boots it issued the notice of charge which gave rise to the above-described investigation.

The Carrier charged the Claimant with failing to comply with instructions from Supervisor Johnson and with withholding information on December 17, 1985 when he purchased two pairs of safety boots at Jower's in Portland, Oregon.

After investigation, the Carrier, having determined that the Claimant failed to comply with instructions from proper authority (Rule 576), withheld information or failed to give a factual report of any irregularity, accident or violation of rules (Rule 574), and was guilty of theft or unauthorized possession of railroad equipment (Rule 575), dismissed the Claimant from service.

The record is absolutely devoid of evidence which would establish that the Claimant was initially given any specific or general instruction regarding the amount of dollars he could spend on the purchase of boots/shoes. It was only after the Claimant ordered a \$150 pair of boots that he was specifically instructed by Supervisor Johnson that he could not spend more than \$100. At no time was the Claimant specifically or generally notified that his purchase was to be limited to a single set of safety shoes. The record also establishes that the Claimant was given no instruction or guidance regarding the type of shoe/boot which he could purchase as the winner of the incentive safety award. In these circumstances, the Carrier has failed to meet its burden of proof and establish that the Claimant (1) did not comply with instructions from proper authority, (2) withheld information regarding any violation of rules or irregularity, and (3) was guilty of any act of theft.

The Carrier should be commended for establishing a safety program which rewards individuals who demonstrate by their actions their concern for their own welfare, the welfare of their fellow employees and the safety of the general public. However, the Carrier did not establish any clear guidelines or issue clear instructions to the winners of the incentive award regarding the amount of money which could be spent on shoes/boots, the establishments where shoes/boots were to be purchased, the types of shoes/boots which were to be purchased, and/or the number of shoes/boots which could be purchased within the dollar limits of the award. In these circumstances we find that the claim must be sustained.

Award The claim is sustained in accordance with the above findings. The Carrier is directed to reinstate the Claimant to service with seniority unimpaired and with pay for any time lost which he might have worked, if he would not have been in furlough status, less any outside earnings. The Claimant's record is to be cleared of all reference to the above charges.

This Award was signed this 12th day of March 1986 in Bryn Mawr, Pennsylvania.

Richard R. Kasher

Richard R. Kasher
Chairman and Neutral Member
Special Board of Adjustment 925