

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

<u>BURLINGTON NORTHERN RAILROAD COMPANY</u>	*	
	*	
-and-	*	CASE NO. 4
	*	AWARD NO. 4
<u>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES</u>	*	

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 Section 3 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 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 choose to appeal their dismissals to this Board, and they have a sixty (60) day period from the date of their dismissals to elect to handle their appeals through the usual appeal channels, under Schedule Rule 40, or to submit their appeals directly to this Board in anticipation of receiving expedited decisions. The employee who is dismissed may elect either option, but 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's written notification of his/her desire for expedited handling of his/her appeal is received by the Carrier Member of the Board, that said 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 had the option to request the parties to furnish additional data regarding the appeal, in terms of argument, evidence, and awards, prior to rendering a final and binding decision in the instant case. 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 excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

Under paragraph 5 of the May 13, 1983 agreement the Referee must agree, as a condition of the assignment, to render an award in each dispute submitted within sixty (60) days of the date the documents specified above are received. The sixty (60) day period may be extended when funding of the dispute resolution procedures under Section 3 of the Railway Labor Act are suspended.

Mr. Merton F. Benson, the Claimant, was a Section Foreman at Snake River, Washington when he was dismissed from service on September 30, 1983 as the result of an investigation held on September 22, 1983. The documents of record, including a seventy-eight (78) page transcript, were received by the Referee on November 14, 1983, and this Award was rendered on January 7, 1984.

Findings and Award

The September 22, 1983 investigation was held in connection with a motorcar being struck by Train Extra 8058 West at approximately 9:45 A.M., on September 12, 1983 at milepost 259.8 near Snake River, Washington. As a result of that investigation the Carrier concluded that the Claimant was responsible for violation of Carrier Rules 35 and 40 by his failure to have the motorcar with himself and three crew members off the main track and in the clear for Train Extra 8058 West on September 12, 1983 in accordance with Train Location Lineup No. 323. The Carrier further concluded that the Claimant's failure to clear the main track was the cause of the collision with Train Extra 8058 and the motorcar which resulted in damage to the motorcar and injury to employees.

During the course of the investigation, which this Board notes was conducted by Road Foreman of Engines R. Campbell in an exemplary manner, the Claimant openly and candidly admitted several times during questioning (transcript pages 59, 60, and 61) that he had incorrectly reviewed his train lineup and in his phone conversation with the train dispatcher he had overlooked the schedule of Train Extra 8058.

There is no showing in the record that any other member of the maintenance of way gang/crew or the train crew involved in the collision bore any responsibility for the Claimant's oversight and error.

In these circumstances, the Carrier had just cause for finding the Claimant guilty of violating Maintenance of Way Rules 35 and 40, which respectively require a section foreman to read the current train lineup to other members of the crew and to clear all trains by no less than 10 minutes.

The only question that remains for this Board is whether the Carrier assessed an arbitrary or overly severe penalty upon the Claimant when it dismissed him from service. The Claimant's service record indicates that he was first employed on Extra Gang #6 on November 16, 1959 and has been continually employed by the Carrier since that date, or for a period of approximately 24 years. That record reflects that on September 19, 1980 the Claimant was injured while operating a motorcar that was involved in a collision with another motorcar, however, that notation on the record does not establish or state that the Claimant bore any responsibility for that incident. On October 23, 1980 the Claimant received an Entry of Censure for violation of Maintenance of Way Rule 702. Aside from that entry of Censure of October 23, 1980, the Claimant possesses an unblemished disciplinary record. Additionally, we note that the Claimant has worked as a Section Foreman at Snake River for approximately twelve years without a disciplinary incident.

For these reasons, as well as the Claimant's forthrightness and candor, we believe that the penalty of permanent dismissal is overly severe. The Claimant has penalized himself through his own negligence as he suffered a broken leg in the incident. In consideration of all of the above circumstances, this Board will convert the Claimant's dismissal into a suspension without pay, and directs that the Claimant be reinstated to service, when he is physically able to return, with seniority unimpaired, but without back pay.

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AWARD: Claim denied in accordance with the above findings.

This Award was signed this 7th day of January, 1984 in Bryn Mawr, Pennsylvania.



Richard R. Kasher
Chairman and Neutral Member
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