

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. 51

AWARD NO. 51

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. James R. Palmer, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on July 20, 1971. He was subsequently promoted to the position of Track Inspector and was occupying that position when he was suspended from service for a period of thirty (30) days by the Carrier on March 7, 1988.

The Claimant was suspended as a result of an investigation which was held on February 19, 1988 in Louisiana, Missouri. At the investigation the Claimant was represented by the Organization. The Carrier issued the thirty (30) day suspension to the Claimant based upon its findings that he had violated Rule 532 of the Rules of the Maintenance of Way Department by allegedly absenting himself from duty without proper authority between approximately 3:00 p.m. and 3:30 p.m. on Friday, January 22, 1988 at Louisiana Depot while assigned as a Track Inspector.

Findings and Opinion

On January 22, 1988 the Claimant, was assigned as a Track Inspector on Patrol Gang #2 with scheduled hours of service of 7:00 a.m. to 3:30 p.m. On the day in question, the Claimant was working with a fellow Track Inspector, Mr. R.L. Jimerson, who was senior to the Claimant.

The evidence of record establishes, without doubt, that the Claimant left his assignment and left the Carrier's property in his personal vehicle, sometime between 2:30 p.m. and 3:00 p.m., for the purpose of obtaining some building materials (two by fours) which he intended to use in the remodeling of his home. The Claimant took an "early quit" for the purpose of conducting personal business. The Claimant does not deny this fact. On the face of the record the Carrier had more than justifiable cause to discipline the Claimant.

The Claimant's only defenses are (1) he presumed he had permission from Track Inspector Jimerson to leave early and (2) the notice of investigation was not precise since it failed to specify a particular rule that the Claimant allegedly violated.

This Board finds no merit in either defense. First, the notice of investigation put the Claimant on clear and unequivocal notice that he was being charged with "absence from duty without proper authority" as a result of his being away from his work site on Friday, January 22, 1988 at approximately 3:00 p.m. It is difficult to conceive of how the Carrier could have constructed a more precise notice of charge. Accordingly, we find that the failure to specify a particular rule in the notice of investigation does not constitute a procedural defect in the instant case.

This Board is also of the opinion that the Claimant, a seventeen (17) year employee in the Maintenance of Way Department, must have known or should have known that a fellow Track Inspector, a non-management, non-supervisory employee, had no authority to "keep him on Carrier time" and release him from duty. If the Claimant made such an assumption he was wrong, and it would be inappropriate for this Board to sustain the claim and create an impression that the Claimant's actions were in any way justifiable. Accordingly the claim will be denied.

Award: The claim is denied. This Award was signed this 8th day of July 1988 in Bryn Mawr, Pennsylvania.

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