

NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT NO. 925

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BURLINGTON NORTHERN RAILROAD COMPANY

- and -

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 56

AWARD NO. 56

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. Alan R. Lund, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on September 11, 1973. He was subsequently promoted to Truck Driver and was occupying that position when he was issued a thirty (30) day suspension from service by the Carrier effective on August 5, 1988.

The Claimant was suspended as a result of an investigation which was held on July 22, 1988 in Sioux City, Iowa. At the investigation the Claimant was represented by the Organization. The Carrier issued a thirty (30) day suspension to the Claimant based upon its findings that he had violated Rules 336(b) and 336(f) of the BN Safety Rules in connection with his failure to yield right-of-way at a stop sign while driving a Carrier vehicle on June 29, 1988 near Waterbury, Nebraska.

### Findings and Opinion

After completing his work as a truck driver assigned to the Waterbury, Nebraska section on June 28, 1988, the Claimant was authorized by his section foreman, Pat Beacom, to take a Carrier vehicle, a high-rail boom truck, to his home so that he could have it serviced (oiled and greased) before he returned to work the next morning.

On the morning of June 29, 1988, the Claimant, after having the boom truck serviced, was driving to work; and, at approximately 7:20 a.m., he was proceeding to cross Highway 20 after completing a stop on county Spur 26A.

The Claimant testified at the investigation, consistently with the information he provided to a highway patrolman on the morning in question, that he stopped, looked both ways, did not observe any vehicles approaching on Highway 20, began to cross Highway 20, saw "a blur" in his right rear-view mirror, and was struck, on the passenger side of the vehicle, by a truck that had been traveling east on Highway 20.

Most unfortunately, the young woman driving the truck was killed and her 3 year old son suffered minor injuries.

The Claimant, suffering from a case of shock, was transported to a local hospital by Carrier personnel, who were contacted and who had immediately proceeded to the scene of the accident. The Claimant had first given his account of the accident to a Nebraska State Patrolman who had been summoned to the scene. At the hospital the Claimant was given some sedation medication after he had submitted to a body fluids test to determine the whether he had any prohibited substances in his system. The body fluids tests proved negative.

In his report, the Nebraska State Patrolman concluded that the Claimant had "failed to yield the right of way".

The Carrier, after the investigation, suspended the Claimant for thirty (30) days because of his alleged violation of Rule 336(f), the rule requiring drivers to comply with stop signs, and Rule 336(b), the Rule requiring a driver to comply with the state's traffic laws where a vehicle is being operated.

The Organization has raised many equitable and well-reasoned defenses in the Claimant's behalf. First, the Organization points out that the Claimant has been an exemplary employee for fourteen (14) years, and that prior to this unfortunate incident, the Claimant had never been the subject of any discipline by the Carrier. The

Organization then points to a number of physical characteristics of the boom truck and the road conditions, which it argues were the cause of or substantially contributed to the accident. Among those physical conditions were the front-mounted carriage of the boom truck, the angle of the sun as it rose that morning, the gravel-like condition of Highway 20, the undulation in Highway 20 which could have created a dip in the road that obscured the approach of the truck and the fact the Spur 26A and Highway 20 intersection is an inherently dangerous intersection.

In spite of these arguments, the Claimant consistently admitted that he had "failed to yield the right of way". It is clear from a reading of this transcript that the Claimant could have justifiably relied upon several of the reasonable rationales for the accident offered to him by the Organization to excuse himself. He chose not to; apparently, in part, because of his continuing distress that a young woman lost her life. In fact, the primary cause of the accident may have been the speed at which the truck was traveling; although we will never know that because there is no evidence in the record about this fact.

Nevertheless, in light of the Claimant's testimony, we must conclude that the Carrier had just cause to impose discipline; and we do not find that the discipline was arbitrary or overly severe. Accordingly, the claim will be denied.

Award The claim is denied. This Award was signed this 24th day of September 1988 in Bryn Mawr, Pennsylvania.

Richard R. Kasher

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