

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

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

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CASE NO. 78

AWARD NO. 78

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 L. Gratz, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on May 4, 1976. The Claimant was subsequently promoted to the position of Head Welder and he occupying that position when he was dismissed by the Carrier on October 12, 1989.

The Claimant was dismissed as a result of an investigation which was held on October 4, 1989 at the Carrier's Section Headquarters in Dilworth, Minnesota. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated Rules 530 and 531 of the Maintenance of Way Department for his misconduct, vulgar language, quarrelsome attitude and damage to Vehicle 6313 on September 25, 1989.

Findings and Opinion

On September 25, 1989, Welding Supervisor Jessie L. Bledsoe met with the Claimant at the frog welding shop in Dilworth, Minnesota. Supervisor Bledsoe advised the Claimant that he, Bledsoe, found the quality of the Claimant's welding to be unacceptable. Supervisor Bledsoe also advised the Claimant that he was going to be disqualified as a head welder. Supervisor Bledsoe then gave the Claimant a formal written disqualification notice which stated, in part, that "You are hereby disqualified as a head welder or welder in the arc welding procedure for not being able to perform the duties as a head welder in the repair of track components".

Supervisor Bledsoe testified that the Claimant became angry and violent. He testified that the Claimant balled up the disqualification papers and threw them at the truck and that the Claimant put his finger in Bledsoe's face and repeated numerous profanities. Supervisor Bledsoe testified that he then told the Claimant that he was fired and to get off Company property. At that point, Supervisor Bledsoe testified, that he and Welding Supervisor Lyle A. Olsen got into the Carrier's truck and the Claimant kicked the driver's side door in.

Supervisor Olson testified that he witnessed Supervisor Bledsoe hand the Claimant the disqualification papers and that the Claimant became upset and angry. Supervisor Olson testified that the Claimant told Bledsoe that "You were brought up here to disqualify me, you can't do it, you son of a b----. I ain't going to take this" and that Supervisor Bledsoe told the Claimant "You can't talk to me like that. I'm not going to take that from you. You can't talk to your supervisor that way". Supervisor Olson further testified that the situation was becoming more heated and that the Claimant and Bledsoe were "nose to nose". Supervisor Olson testified that Bledsoe then advised him that they were going to leave and that the Claimant then kicked the door on the Carrier's truck.

Special Agent Joe H. Christensen testified that he accompanied Supervisors Bledsoe and Olson back to the frog shop. Special Agent Christensen testified that the Claimant was very upset and overwrought. Christensen also testified that the Claimant submitted to a urine analysis and that the results of that test were negative.

The Claimant testified that he became angry when Supervisor Bledsoe gave him the disqualification notice and he crumpled up the notice and threw it at the truck. The Claimant testified that he told Bledsoe that "Well, first you disqualify me from that bulls--- up there at Crookston, and then you get together and then you can disqualify me from this here job over here at Dilworth, and then you

just keep disqualifying me all over the railroad until there is no place left to go". The Claimant testified that he swore at Supervisor Bledsoe and that Bledsoe shouted back that he was fired. The Claimant admitted that he then kicked in the door of the Carrier's truck.

The Organization has argued that the Claimant was not given a fair and equal opportunity to improve his welding work. The Organization contends that the Carrier offered school and training opportunities to employees who were junior to the Claimant and did not offer these same opportunities to the Claimant.

The Organization maintains that Welding Supervisor Bledsoe had made a predetermination to disqualify the Claimant from his position as Head Welder. The Organization contends that Bledsoe had singled out the Claimant and that Bledsoe had specifically taken photographs of the Claimant's work in an attempt to prove that this work was not up to standard. The Organization asserts that these actions in concert with the Carrier's not offering the Claimant any training opportunities were discriminatory.

The Organization further maintains that the Carrier's charge that the Claimant was guilty of the "use of vulgar language" was arbitrary. The Organization contends that the words used by the Claimant have been used by many other employees and officers of the Carrier and that that language could be considered as "simple shop talk".

In light of all the above noted provocations, the Organization argues that the Claimant was simply being human when he became upset and angered on September 25, 1989.

This Board finds a number of the Organization's arguments to have merit. However, we do not find that those arguments outweigh the behavior of the Claimant on the day in question. The Carrier and its officers have the right to expect that the employees shall not be "quarrelsome or otherwise vicious" but that they shall work with "courteous and orderly conduct". The Claimant, himself, testified that he was aware of his recourse under the collective bargaining agreement to call for an unjust treatment hearing so that the merits of his disqualification could be adjudicated. The Claimant testified that he decided not to request such a hearing because "you ripped me off once, you are going to rip me off again, That is exactly what has been going on around here for the last ten years between employees who were organizing themselves against me and management, low-ranking management".

The Claimant, a thirteen year employee with a clean record,

clearly knew what type of behavior was required by the Carrier. Additionally he also knew that he could, within the structure of the collective bargaining agreement, challenge his disqualification by Supervisor Bledsoe. Unfortunately, he chose instead to become quarrelsome and to kick in the door of a Carrier truck when he learned that Bledsoe was disqualifying him.

The Claimant's vulgar language was more than just shop talk; his profanity was used in the context of his being "quarrelsome" with duly designated supervisory authority. His "balling up" of the disqualification papers, throwing them at Supervisor Bledsoe's truck and kicking the door of that truck, causing damage to Carrier property, represents a most serious act of defiance of proper authority. This Board cannot excuse that type of action.

The Claimant's testimony of the events of September 25, 1989 was refreshingly honest and it is regrettable that his actions on that date jeopardized his employment. This Board, however, cannot mitigate the Claimant's actions nor the Carrier's right to expect certain standards of behavior from its employees.

The claim will be denied.

Award: The claim is denied. This Award was signed this 18th day of January 1990 in Bryn Mawr, Pennsylvania.


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