

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. 84

AWARD NO. 84

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. John M. Flaherty, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on July 1, 1976. The Claimant was subsequently promoted to the position of Head Welder and he was occupying that position when he was suspended for five (5) days by the Carrier beginning on March 5, 1990.

The Claimant was suspended as a result of an investigation which was held on February 6, 1990 in the Trainmaster's Office in Minneapolis, Minnesota. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant for a period of five (5) days based upon its findings that he had violated Rule 532 and General Rule B when he absented himself from duty without proper authority at approximately 12:20 p.m. on Friday, January 26, 1990.

### Findings and Opinion

On Friday, January 26, 1990, the Claimant was working as a Head Welder at the Northtown Terminal. At approximately 12:20 p.m., the Claimant contacted Roadmaster's Clerk E.J. Burns to advise him that he was leaving for the day. Mr. Burns then contacted Roadmaster W.A. Morris at approximately 12:21 p.m. to advise him of the Claimant's telephone call.

Roadmaster Morris testified that prior to January 26, 1990 he had had a discussion with the Claimant on Tuesday, January 16, 1990 regarding the Claimant's absenting himself from work on Monday, January 15, 1990. Roadmaster Morris testified that he informed the Claimant that he had to obtain prior approval from the Roadmaster before he absented himself from work.

Roadmaster Morris also testified that he had a discussion with Claimant on Friday, January 19, 1990 because a member of the Claimant's crew, Grinder Operator G.J. Pilarski, had absented himself from work without prior approval from the Roadmaster. Roadmaster Morris testified that for the second time he explained to the Claimant that prior to absenting themselves from work the employees had to obtain the Roadmaster's permission.

Roadmaster Morris testified that on January 26, 1990, when he learned from Clerk Burns of the Claimant's call, he went to the WFE building at approximately 12:25 p.m. to see the Claimant but he found that the Claimant had already left work. Roadmaster Morris also testified that he spoke to Grinder Operator Pilarski to learn why the Claimant had left and that Mr. Pilarski informed him that he (Pilarski) did not know.

Roadmaster's Clerk E.J. Burns testified that he received a telephone call from the Claimant at approximately 12:20 p.m. on January 26, 1990 in which the Claimant advised him that he was leaving work. Roadmaster's Clerk Burns testified that he asked the Claimant if there was any reason for his leaving work and that the Claimant stated that there was no reason. Roadmaster's Clerk Burns further testified that he immediately contacted Roadmaster Morris on the Carrier's MRAS to inform him of the Claimant's telephone call.

In response to questions by the Claimant, Roadmaster's Clerk Burns testified that he did not recall (1) that the Claimant had called at noon on January 26, 1990 asking to speak to Roadmaster Morris, (2) that the Claimant had said he would try to reach the Roadmaster on the radio and (3) that the Claimant advised him during the 12:20 telephone call that he had been unable to reach the Roadmaster by radio. Roadmaster's Clerk Burns did testify that he

remembered that the Claimant had called at 12:20 p.m to leave a message informing Roadmaster Morris that he was leaving work.

The Claimant testified that he had not been feeling well all day, but that prior to noon on Friday, January 26, 1990 he did not feel that his sickness would in any inhibit his ability to perform his job. The Claimant testified that at noon his illness was worsening and he called Roadmaster Morris' office. The Claimant testified that upon being advised by Roadmaster's Clerk Burns that Roadmaster Morris was not in his office, he advised Burns that he would try to reach the Roadmaster on the radio. The Claimant testified that he made several attempts to reach Roadmaster Morris on the radio between 12:00 and 12:20 p.m. but was unsuccessful. The Claimant testified that he then again telephoned Roadmaster Morris' office and advised Roadmaster's Clerk Burns that he was leaving work.

The Claimant testified that he had had conversations with Roadmaster Morris on January 16 and January 19, 1990 regarding the Roadmaster's policy on employees absenting themselves from work. The Claimant testified that he understood that employees were to contact Roadmaster Morris prior to leaving early. The Claimant also testified that he (1) did not advise Burns that he was sick and (2) did not ask Burns for assistance in contacting Roadmaster Morris during either his 12:00 p.m. or 12:20 p.m. conversation with Roadmaster's Clerk Burns.

Organization witnesses testified that there have been circumstances when employees have left work without obtaining permission from the Roadmaster and they were not subject to discipline.

The record is clear that Roadmaster Morris on two (2) separate occasions specifically advised the Claimant that it was necessary for him to obtain the Roadmaster's permission before leaving work. The Claimant acknowledged receipt of this specific notice.

The Claimant has also acknowledged that contrary to that notice he left work early on January 26, 1990 without advising Roadmaster Morris, and the Claimant has implied that an alleged sickness was the reason for his leaving early; and, apparently, for his not remaining on the property for the extra time it would have taken to ensure that information was directly conveyed to Roadmaster Morris and permission received.

The Claimant knowingly violated the policy directly communicated to him by his Roadmaster. If the Claimant's "sickness" was so severe and/or resulted in some type of medical emergency, which it apparently did not, then the Claimant might be able to

successfully argue that getting permission to leave early from his Roadmaster was a physical impossibility. However, the Claimant has not submitted any evidence which would justify his leaving early, even if he was experiencing some sickness, without obtaining the Roadmaster's permission.


Roadmaster Morris's policy of requiring employees subject to his authority to obtain proper, supervisory permission prior to leaving work early has not been shown to be an unreasonable rule.

In these circumstances, this Board must conclude that the Carrier had just cause to discipline the Claimant for his knowing violation of the policy. Further, the Board finds that the imposition of a five (5) day suspension was neither harsh nor overly severe in view of the Claimant's clear knowledge of the rule and his, apparent, disregard for same.

Accordingly, the claim will be denied.

Award: The claim is denied. The Carrier had just cause to discipline the Claimant and to impose a five (5) day disciplinary suspension.

This Award was signed this 24th day of June 1990.

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