

PUBLIC LAW BOARD NO. 5516

PARTIES TO DISPUTE:

United Transportation Union

- and -

AWARD NO. 47
CASE NO. 47

Burlington Northern - Santa Fe Railroad Company

STATEMENT OF CLAIM:

Claim in behalf of Claimant Conductor M. A. Weiler, that he be reinstated to service of Burlington Northern Railroad and be allowed all earnings lost pending investigation, attending investigation and as a result of his dismissal until such time he again performs service in his craft, and that all mention of this incident be stricken from Claimant's personal record.

FINDINGS:

This Public Law Board No. 5516 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

The discipline assessed in this case simply cannot be allowed to stand because of the grossly improper conduct of the Manager of Operating Practices (MOP). The MOP, while acting as hearing officer of the first investigation, instituted a rule that the Claimant's representative raise his hand and await recognition by the MOP before making an objection. In the second investigation the MOP stepped down as hearing officer and assumed the role of Carrier witness. The new hearing officer continued the same raise-your-hand-for-recognition

rule established by the MOP. The effect of this rule, as established in the record before this board, was that the Claimant's representative was denied the right to object to perceived improper questioning at the time the objectionable questions were asked, and was not recognized by the hearing officer until additional questions and answers had been given by the witnesses. Such a procedure is absolutely improper. Moreover, during the second investigation while the MOP was testifying as a witness, the record reveals that the hearing officer engaged in strategy sessions with the MOP. This improper conduct was challenged by the Claimant's representative.

After the hearing closed, the MOP, who had issued the notice of investigation, in his own name, served as hearing officer of the first investigation, participated as witness in the second investigation, then issued a single letter referencing the two investigations held on December 14, 1994 and the MOP assessed the discipline of dismissal from service. It was fundamentally unfair for the MOP to be an examiner, witness and judge in the proceedings now under review by this board. The totality of the MOP's improper conduct requires that the discipline be set aside.


We agree with the position of the Organization that the interest of the general public, co-workers and the Claimant himself requires assurance that employees engaged in safety sensitive positions be unfettered by alcohol or chemical dependencies. Accordingly, and strictly limited to the narrow facts of this

particular record, we shall reinstate the Claimant to service on a conditional basis with all rights unimpaired, and without backpay. The reinstatement conditions can require that the Claimant be fit for service with a reasonable expectation that he be able to sustain future sobriety. Jurisdiction is maintained.

AWARD

As per Findings.

~~ORDER~~ The Carrier has been directed to comply with this award and has complied.


D. P. Twomey
Chairman and Neutral Member


Organization Member


Carrier Member

DATED: 2-27-97