

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONWith Referee Rodney E. Dennis

Award 23818

Docket 43469

PARTIES (Brotherhood of Locomotive Engineers
TO (
DISPUTE (Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim is for removal of record entry and reinstatement of Engineer C. I. Meyer with all rights, privileges and fringe benefits restored, and with full compensation for all time lost."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Claimant C. I. Meyer was, at the time of his dismissal from service, employed by Carrier as a Fireman in the Lincoln Ravenna Freight Pool. On January 17, 1985, he was arrested for possession of cocaine with intent to deliver and possession of hashish with intent to deliver. Claimant was notified on January 21, 1985, to appear at a Hearing to investigate and determine his responsibility in connection with conduct unbecoming an employee and bringing unfavorable publicity to Carrier.

Essentially, Claimant was charged with a violation of Rule 700:

"Employee will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will."

The Hearing was held on January 26, 1985. As a result of that Hearing, Claimant was found guilty as charged and dismissed from Carrier's service. A Transcript of that Hearing has been made a part of the record of this case. A careful review of that record reveals that Carrier based its decision

to dismiss Claimant on an article in the local newspaper and it did not present evidence in the record to demonstrate in any way how the newspaper article had a negative impact on the Burlington Northern, its customers, or its business. In order to discipline an employee for off-duty behavior, some nexus between that adverse behavior and a negative impact on the Employer's mission must be demonstrated. No such connection was demonstrated in this case. It is this Board's decision, therefore, that Carrier should reinstate Claimant to the roster. After a letter is mailed, Claimant shall be granted two weeks in which to report for duty. If he fails to do so, his name shall be permanently removed from the roster and he shall be considered to have abandoned his employment with Carrier. With regard to the issue of compensation for time lost, the record demonstrates, that Claimant, due to unique circumstances, was unavailable to perform service in the period following his termination. Therefore, no payment for lost time or benefits is awarded.

AWARD Claim sustained per
Finding.

DATED AT CHICAGO, ILLINOIS
THIS 12TH DAY OF MARCH 1987.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

ATTEST:



Nancy J. Bever
Executive Secretary