

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 5150

UNITED TRANSPORTATION UNION  
and  
BURLINGTON NORTHERN RAILROAD

Case No. 1  
Award No. 1  
NMB Code 173

John C. Fletcher, Chairman & Neutral Member  
Jerry N. Locklin, Carrier Member  
M. M. Winter, Employee Member

Hearing Date - January 31 1992

STATEMENT OF CLAIM:

Claim of Sioux City, Iowa Brakeperson P. S. Rosenbaum for record clearance and full pay for all time lost for ten days suspension from service commencing at 12:01 a.m., June 12, 1989, to an including June 21, 1989, for alleged violation of Rule 104(j) of the General Code of Operating Rules while working as a crew member of Train 01-132-15, on April 16, 1989.

FINDINGS:

Public Law Board No. 5150, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, the Board has jurisdiction over the dispute(s) herein; and, that the parties to the disputes(s) were given due notice of the hearing thereon and did participate therein.

On April 17, 1989, Claimant, the lead brakeperson on Train 01-132-15, along with other members of the crew, was cited to attend an investigation in connection with a run-thru of crossover Switch No. 6 at Willmar, Minnesota in the early morning hours on Sunday, April 16, 1989. Following the conclusion of the investigation Claimant was assessed discipline of ten days suspension. The assessment of discipline was appealed by the Organization on a variety of grounds, procedural and substantive.

It is noted that from the outset of the appeal procedure the Organization contended, *inter alia*, that the entire process was flawed because the investigation transcript had been edited and was incomplete. Carrier acknowledges that the transcript had been edited and attempted to explain the matter on the basis that "... only unpermissible, irrelevant, self serving statements, by non witnesses, were deleted ... ."

Carrier is not privileged to edit transcripts of any statements or testimony made on the record during the hearing. Unilateral editing of

testimony and statements made in the course of a formal investigation is an affront to due process, as contemplated by the discipline rules of the Agreement. If the hearing transcript contained "unpermissible" material it may be disregarded by the conducting officer when he is engaged in the decision process but it may not be excised from the transcript so that subsequent reviewing authority (Union Officers and Management Officials on appeal as well as this Board, for instance) is deprived of the opportunity of making a determination on whether it was permissible or not.

With regard to deleting "irrelevant [and] self serving statements," what may seem irrelevant to one may seem completely relevant to another, depending on their role in the process and the narrow goal sought to be accomplished. And when something is characterized as "self serving" it is usually the opponent offering the characterization. Self serving statements and self serving testimony cannot be excluded merely because they are self serving, for they may also be truthful and they may also be relevant and important to a correct determination of the matter under review.

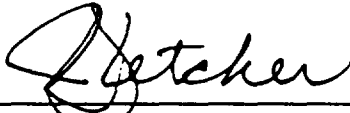
Procedural error obtained when Carrier failed to provide Claimant and her representative with an unedited copy of the investigation transcript. This procedural error fatally flaws the disciplinary process and the suspension assessed must be rescinded.

**AWARD**

The Claim is sustained. All references to the incident and discipline must be removed from Claimant's personnel records and she is to be compensated for all wages lost as a result of the investigation and suspension.

**ORDER**

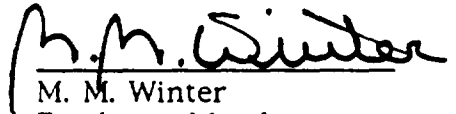
Carrier is ordered to comply with this Award within thirty days of the date two members of the Board affix their signatures hereto.



John C. Fletcher, Chairman & Neutral Member



Jerry N. Locklin  
Carrier Member



M. M. Winter  
Employee Member

Dated at Mt. Prospect, IL, this 21st day of March 1992