

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Burlington Northern Railroad Co.

Dispute: Claim of Employees:

1. That Mr. S. B. McGinn was unjustly suspended from the service of the Burlington Northern, Inc. from April 15, 1981 to May 14, 1981, for alleged violation of Rules "E" and "60" of the rules, regulations, safety rules, and instructions governing mechanical department employees effective July 1, 1979, Form MP-1, on March 26, 1981.

2. That accordingly, the Burlington Northern, Inc. compensate Mr. S. B. McGinn accordingly -

- (a) compensation for all time lost.
- (b) make whole all vacation rights, if affected by this suspension.
- (c) pay premium or hospital dues for hospital, surgical and medical benefits for all time held out of service.
- (d) pay premiums for his group life insurance for all time held out of service.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant herein was assigned to work as a Hostler Helper. The incident that led to this dispute occurred when he was observed by his Foreman to be using a radio to communicate signals to his Hostler while spotting engines into a track in the diesel shop in which they worked. While doing this, he was positioned out of the view of the Hostler to whom he was giving directions for the movement of equipment on his radio.

Subsequent to an investigation, the Carrier found the Claimant had performed his duties in an unsafe manner and assessed a penalty consisting of a thirty-day suspension.

The Carrier states that its instructions were clear that the use of radios for switching inside the shop was strictly forbidden because the shop structure interfered with radio communications. Therefore, in the interest of safety, the Carrier proscribed the use of radios in the shop.

While there are certain procedural contentions of record under the circumstances herein, the Board will dispose of the dispute on its merits.

With respect to the merits, the evidence adduced at the hearing, including the testimony of the Claimant, clearly establishes that he was aware of the Carrier's requirements and he chose to ignore them. Accordingly, the Carrier's assessment of discipline cannot be said to be unreasonable or arbitrary, and the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1985.