

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13085
Docket No. 12974
96-2-94-2-131

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake and Ohio Railway Company now CSX Transportation, Inc., violated Rule 37 by removing from service on April 28, 1993, failing to afford a fair hearing and then unjustly dismissing Electrician C. L. Perkins from services as a result of the unfair hearing on May 4, 1993, and;
2. That the Chesapeake and Ohio Railway Company return Electrician Perkins to service with all seniority rights unimpaired, and;
3. That the Chesapeake and Ohio Railway Company compensate Electrician Perkins for all the time lost as result of this unfair dismissal, and;
4. That the Chesapeake and Ohio Railway Company make Electrician Perkins whole for all fringe benefits, including but not limited to, health, dental and life insurance, vacation and retirement credits to which he would be entitled by virtue of his continued employment."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

At the time this dispute arose, Claimant was employed as an Electrician in Carrier's locomotive repair shop at Huntington, West Virginia. By letter of April 29, 1993, Claimant was directed to attend a formal Investigation in connection with charges that he was sleeping on duty and left his assignment without permission. The Investigation was held on May 4, 1993, and by letter of May 28, 1993, Claimant was informed that he had been dismissed from Carrier's service. The Organization appealed Claimant's discipline. That appeal was denied, and the claim was subsequently progressed in the usual manner.

At the outset, the Organization raised a procedural objection concerning the conduct of the investigatory Hearing. A careful review of the transcript of the Hearing in this case, fails to support the Organization's position in this regard. Nor do we find that Carrier violated the Agreement when it held Claimant out of service pending the results of the Investigation.

With respect to the merits, it is the position of the Carrier that Claimant was properly charged. It maintains there was sufficient probative evidence on the transcript of the Investigation to prove Claimant's guilt. The Organization argues that Claimant was assisting a Machinist in "black lighting" or testing for fuel leaks and was waiting in the engineer's control seat to shut off the fuel pump when requested to do so. Moreover, the Organization points out that Claimant was ill on the evening in question, and left the property because of his physical discomfort.

Testimony on the record before this Board supports the Carrier's position. Both Supervisors testified credibly that they observed Claimant with his head down and his eyes closed. Although the Organization offered testimony of a co-worker to support Claimant's explanation that he was simply assisting in "black lighting," Claimant's own testimony is internally inconsistent. Furthermore, Claimant does not contest the Carrier's allegation that he left the property without permission. The only defense offered by Claimant was that neither Supervisor told him he could not leave. At no time during the processing of the claim on the property did Claimant offer documentary evidence confirming his alleged illness on the night in question. In view of the foregoing, the discipline assessed by Carrier was neither unreasonable nor inappropriate.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.