

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, the Burlington Northern Inc., arbitrarily disciplined Shop Electrician R. Minefee by entering a Mark of Censure on his personal record.
2. That accordingly, the Burlington Northern Inc., be ordered to remove the Mark of Censure. Claim to start on October 13, 1977.

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 employe 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.

An investigative hearing was held on September 20, 1977 to determine claimant's responsibility in connection with his alleged failure to disconnect traction motor leads on engine 3004 on August 20, 1977.

He was adjudged guilty of violating Rule 667 of the Burlington Northern Safety Rules and an entry of censure was made on his personal record, effective October 13, 1977.

This determination is now before us pursuant to the applicable provisions of the parties' collective Agreement and the Railway Labor Act as amended.

In reviewing this case, it is necessary at the outset to dispose of the procedural objections raised by claimant regarding the hearing officer's multiple roles. We recognize of course, the Board's diverse rulings on this issue and the prompt resort of either party to cite them as precedent. But in the instant case, we find neither prejudgment nor partisan testimony that would vitiate the integrity of the administrative proceeding.

Claimant was provided a fair and reasonable hearing that comported with the essentials of due process.

Conversely, we do not find that claimant was insubordinate, when carefully assessing his precise behavior within the total context of his assigned task.

Certainly he was under a pressing obligation to carry out expeditiously the foreman's directive and abide by the employment chain of command. But the record clearly shows that he complied with this instruction between 3:20 pm and 3:45 pm. Beyond this time, there is conflicting, albeit not exactly hostile, testimony.

The foreman stated that at 3:45 p.m. claimant was cleaning his tools. He testified that despite his telling claimant that he had at least ten (10) minutes more to finish the job, claimant had not performed any additional work by 3:55 p.m.

The Organization's witness testified that claimant worked at removing the traction motor leads until the normal quitting time, thus working through his usual five (5) or ten (10) minutes that is allowed for putting tools away. Claimant testified that he thought it was actually 4:00 p.m. when he stopped working.

There were no direct or preemptory challenges to these statements.

In disciplinary proceedings, it is axiomatic for judicial bodies to observe the substantial evidence rule. It is a fundamental due process requirement.

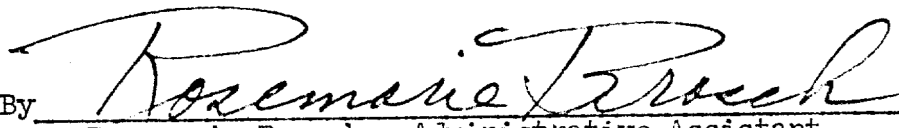
The record does not provide that quantum measure of evidence that would satisfy this standard. Accordingly, we are compelled to sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of September, 1979.