

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 {
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern Inc., violated the existing controlling Agreement, Rule 35, but not limited thereto, when on November 17, 1978, Machinist D. L. Updike was improperly and unjustly dismissed from Carrier's service.
2. That, accordingly, Machinist D. L. Updike be reinstated to the service of the Carrier with payment for all lost time with seniority rights unimpaired and all other rights and privileges restored.

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 employes 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.

Claimant was dismissed from service as a result of two charges:

- (1) leaving his work assignment before the end of the shift and indicating on his time card that he had worked eight hours on October 13, 1978, when, in fact, he left work earlier without permission, and
- (2) insubordination when, on October 18, 1978, he refused to obey the instructions of his foreman to work on the journal lathe for the last portion of his shift.

Both charges were covered by carrier's charge that claimant, by these actions, was in violation of carrier's Rules 661-665 and 667.

Hearings were held to investigate both incidents. Claimant was found guilty by the hearing officer on both counts and was discharged from carrier's service. The transcript of both hearings have been made a part of the record of this case. A review of those transcripts reveals that claimant was granted all due process rights required by contract.

The organization contends that carrier based its findings of guilt for leaving the property before the end of the shift on a hearsay statement submitted by a foreman who was not present at the hearing. The organization claims that such a statement is not permissible in a disciplinary hearing, because the writer cannot be cross-examined. It also argues that if claimant was guilty of leaving work five minutes early, discharge is far too severe a penalty for such a minor infraction.

On the insubordination issue, the organization argues that no direct order was ever given and that other employees have refused similar orders and have not been dismissed from service. Carrier does not administer discipline in a consistent manner. Its decision to discharge claimant is arbitrary and capricious and should not be allowed to stand.

Carrier argues claimant was identified by an eye-witness as one of a number of employees who left work early on October 13, 1978. He was guilty of dishonesty, since he indicated on his time card that he worked a full shift.

As to the insubordination charge, carrier concluded, as a result of the hearing, that claimant fully understood that his foreman wanted him to work on the journal lathe and he purposely refused to do so. Whether this refusal was in response to a direct order or to a request and instruction, it is still insubordination and grounds for discharge.

When both incidents are considered together, dismissal is more than appropriate. A review of the record of this case persuades this board that claimant was guilty as charged on both counts--leaving the workplace without authority and insubordination.

A careful reading of the transcript of the hearing involving the insubordination charge clearly reveals that claimant understood that the foreman wanted him to work on the journal lathe and that he refused to do so. This failure to follow the instruction of the foreman can only be construed as insubordination, a punishable offense.

This board has thoroughly analyzed every aspect of the October 13, 1978, incident, the hearing into that matter, carrier's actions as a result of that incident, and the disposition made in Award No. 8379 involving the same circumstances. Our reasons and conclusion are equally applicable here. We see no reason to restate them.

A W A R D

Claim denied.

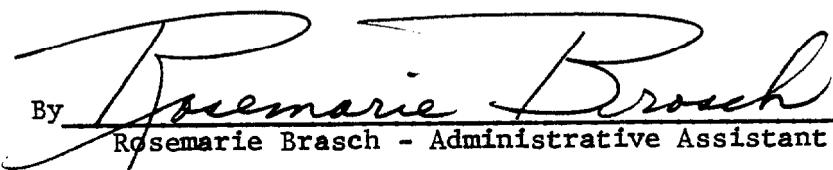
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Award No. 8463
Docket No. 8419
2-BNI-MA-'80

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 8th day of October, 1980.