

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. Claimant William Forbush did not receive a fair and impartial investigation as a result of the Carrier not calling a witness with material information, Car Foreman Lyle Burr.
2. That Burlington Northern, Inc. further violated the terms of the current Agreement when Bridal Veil Shop, Minneapolis, Minnesota, upgraded Carman William Forbush was unjustly dismissed from service on January 13, 1979, following investigation held on December 19, 1978.
3. That accordingly, Burlington Northern, Inc. be ordered to compensate Claimant Forbush eight (8) hours pay at the pro rata rate for each of the following days: January 15, 16, 17, and 18, 1979.

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 waived right of appearance at hearing thereon.

The record shows claimant was employed as a carman apprentice at Carrier's Bridal Veil Shop, Minneapolis, Minnesota.

The Carrier states that apprentices are required to complete lessons provided by the Railway Educational Bureau at the rate of two per month; that, by agreement, an apprentice's progress is considered unsatisfactory if he falls more than two months, or four lessons behind, and an apprentice who maintains unsatisfactory progress in his lessons is subject to formal investigation, and possible discipline.

The Carrier states that on November 3, 1978, the Carrier's records indicated that claimant's lessons were three behind, and contends that as a warning a letter was addressed to claimant advising him of his status, and that three days later, on November 6, 1978, the Assistant General Foreman advised claimant that he

was six lessons behind. On December 11, 1978, the Carrier's records showed that claimant was five lessons behind, and on that date claimant was notified:

"Attend investigation in the Conference Room, Northtown Hump Tower, 4059 East River Road, Minneapolis, MN at 10:30 am Tuesday, December 19, 1978 for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged failure to maintain satisfactory progress in the completion of the technical lessons of your apprenticeship program.

Arrange for representative and/or witnesses, if desired in accordance with governing provisions of prevailing schedule rules.

Please acknowledge receipt by affixing your signature in space provided in copy of this letter.

/s/ E. L. Phillips
Superintendent

cc: Mr. L. W. Novitsky, Mr. W. Pidany."

The investigation was held as scheduled. There was substantial evidence adduced at the investigation that at the time of the charge claimant was five lessons behind.

Rule 38(f) of the applicable agreement is quoted in the record, and reads in part:

"... Progress in connection with the Railway Educational Bureau Program will not be considered satisfactory if the apprentice becomes more than two months behind in completing his lessons, or if the apprentice becomes more than three months behind in reworking lessons graded at less than 75%; but illness or other causes beyond the control of the apprentice will be taken into consideration. An apprentice dismissed from service solely because of unsatisfactory progress in technical training will be reinstated if he submits all lessons in arrears in satisfactory condition to the apprentice supervisor within 10 calendar days after his dismissal."

The Board finds that claimant's dismissal was warranted. He was reinstated when he submitted all lessons in satisfactory condition after being graded by the Railway Educational Bureau.

The matter was handled in accordance with Rule 38(f).

A W A R D

Claim denied.

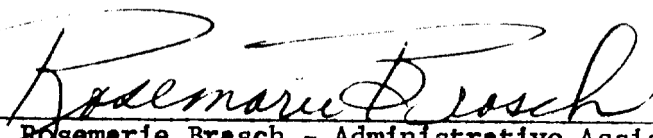
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Award No. 8929
Docket No. 8794
2-BN-CM-'82

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 24th day of February, 1982.