

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. improperly and unjustly dismissed Carman D. W. Schmidt, Havelock Shops, Lincoln, Nebraska, from service on March 2, 1979.
2. That accordingly, the Burlington Northern, Inc. be ordered to compensate Carman D. W. Schmidt, Havelock Shops, Lincoln, Nebraska, all time lost commencing March 2, 1979 until he is restored to service as a carman; restoration of all fringe benefits, all seniority and vacation rights unimpaired; made whole for health, welfare and insurance benefits; made whole for pension benefits including Railroad Retirement and unemployment insurance, and all other benefits that he would have earned during the time he was 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 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 to appearance at hearing thereon.

The Claimant was notified to attend an investigation concerning an altercation. Subsequent to the investigation, the employee was terminated from service.

The record clearly shows that there was an altercation and there is evidence which suggests that the Claimant was the aggressor, although he insists that he was verbally provoked in the matter. Moreover, it is rather clear that some degree of discipline was warranted. Thus our only question is whether it was arbitrary for Carrier to dismiss this Employee under all of the circumstances. We feel that it was.

The fact that no blows were actually struck is not necessarily dispositive of the issue. But, it is evidence that the event was more of a pushing and shoving match of short duration than a fight as such.

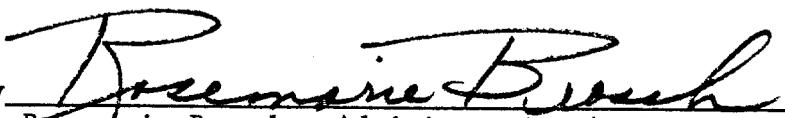
A W A R D

1. The termination is set aside.
2. Claimant shall be restored to service with retention of seniority

and other benefits but without reimbursement for compensation lost during the period of the suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.