

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

Dispute: Claim of Employee:

1. That in violation of the current Agreement, Carman A. J. Brudy was unjustly dismissed from the service of the Carrier on August 20, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned Claimant whole, with all seniority rights and all other benefits, including wages for all time lost, commencing August 20, 1979 and continuing until returned to 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 of appearance at hearing thereon.

On July 2, 1979, Claimant received notice to attend an investigation in connection with his alleged failure to protect his assignment as Car Inspector. This investigation was postponed until July 24, 1979. Claimant was initially employed by Carrier as a Carman Apprentice on January 17, 1977. At the time of his dismissal, Claimant was working as a Car Inspector at the Mandan Train Yard. He was granted a leave of absence for the month of May for personal reasons. On May 31, 1979, Claimant was notified that in order for him to be absent from his assignment, he had to make a request to be absent. Claimant did not report to his assignment for the period June 1 through June 30, 1979.

At the investigation, Claimant testified he did not make arrangements to be absent. He stated he was told he could not come back to work without a doctor's excuse, and he assumed Carrier knew he was sick. Claimant admitted to being employed by the Ramada Inn as an I.D. checker.

The Organization's position is that the investigation was not fair and impartial in that the notice did not list one of the two safety rules cited in the letter of dismissal, which dealt with employes engaging in another business or occupation. Organization also asserts Carrier did not prove violation of

Safety Rule 665 since Carrier knew Claimant was sick and would not let him return to work.

The Board's review of the record fails to find substantive grounds upon which to sustain the Organization's claims. The charge against Claimant clearly communicated the charged infraction and identified the time period for which he was being held responsible. This notice complies with prior awards in that it sufficiently alerted Claimant of the charges and enabled him to prepare a defense.

Claimant relies entirely on statement of Assistant General Car Foreman that he could not come back to work without a doctor's excuse. There is no evidence that Claimant was disabled and unable to work. On the contrary, Claimant admitted he was employed by another employer during the period of absence. Claimant had been on a leave of absence for personal reasons. He made no arrangements to continue his absence; rather, he engaged in employment elsewhere. From essentially the aforementioned evidence, Carrier considered Claimant to have failed to protect his assignment and had engaged in outside employment. We agree that the evidence in the record substantially supports Carrier's charges and its decision to discipline.

A W A R D

Claim denied.

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.