

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company)

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician Aaron V. Linxwiler was unjustly suspended from the service of the Burlington Northern Railroad for a period of twenty (20) days as the result of an investigation held March 20, 1985. Subject twenty (20) suspension is to begin upon notification Mr. Linxwiler is able to return to duty from medical leave of absence.

2. That the investigation held March 20, 1985, was not a fair and impartial investigation in that Electrician Linxwiler did not receive the required advance written notice of the full and specific charges for which the investigation was being held and for which he was later disciplined.

3. That accordingly, the Burlington Northern Railroad be directed not to suspend Mr. Linxwiler from its service upon his ability to return to work or, if so suspended, compensate him for any and all wages and benefits lost by him as the result of said suspension and that all record of this investigation and suspension be removed from his personal record.

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 employes 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, an Electrician with approximately 30 years of service, was assessed a 20 day actual suspension following an Investigation which was originally scheduled for March 11, 1985, and duly postponed until March 20, 1985, because of Claimant's medical condition.

On March 4, 1985, the Carrier sent a directive to Claimant instructing him to attend an Investigation which was eventually held on March 20, 1985, to determine the Claimant's responsibility for Claimant's failure to report an accident/incident at the King Street Coach Yard, to Claimant's immediate Supervisor as soon as possible by the first available means of communication, which resulted in Claimant being hospitalized on or about February 4, 1985.

Following the Investigation, the Carrier assessed a 20 day actual suspension which was timely appealed through all authorized Carrier Officers. On appeal, the Organization alleges that the Carrier's action was arbitrary, capricious, unjust, and an abuse of managerial discretion. The main thrust of the Claimant's appeal is that the Carrier's Notice of the reason for the Investigation was not sufficiently precise thus preventing Claimant from preparing an adequate defense to the charges. A subsidiary basis for appeal is the Organization's contention that after the facts became known, the Carrier added charges of additional Rule violations in support of its assessment of discipline.

The record of Claimant's testimony shows that Claimant experienced severe pain to his back, while at home, on January 31, 1985, and was transported to a hospital by fire department ambulance for subsequent admission, on January 31st, which was followed by surgery for a herniated disc. Claimant was released from the hospital on February 11, 1985, and filed a personal injury report with the Carrier on February 24, 1985. The report contains a statement to the effect that Claimant's medical problems are related to working conditions. Claimant also testified that he made a call to Carrier on February 1, 1985, notifying one of Carrier's Supervisory employees of the reason for Claimant's absence. The record also reflects a contact between the Organization's General Chairman and the Carrier's Assistant General Foreman in which the Organization advised the Carrier that Claimant was hospitalized for the surgical procedure.

The Carrier premises its disciplinary action on two fundamental facts; first, the Carrier alleges that the period between the onset of the disability and the filing of the personal injury report was not "as soon as possible," and that Claimant led Carrier to believe the Claimant's medical problems were not job-related.

Fundamental notions of fair play and due process form the basis for the contractual provision which require that the Carrier advise the employee of the charge for which an Investigation is being conducted. See First Division Award No. 19235 and Third Division Award No. 3011. A careful examination of the Carrier's Notice of Investigation does contain the information necessary for the Claimant to prepare his defense. This conclusion is supported by Claimant's own testimony regarding his preparation of a defense.

The Carrier's requirement that employees report all personal injuries as soon as possible is a reasonable Rule which allows the Carrier to investigate any condition capable of causing injury so that its liability may be limited and further employee exposure to hazardous conditions may be reduced through corrective actions taken by the Carrier. See Fourth Division Award No. 4199. The Claimant cannot abrogate his responsibility to report a personal injury promptly on the basis of a general comment made by an attending physician to concentrate on getting better and don't worry about the job. The evidence in the record, including the Claimant's own testimony fully supports the Carrier's conclusion that the Claimant failed to comply with the Carrier's Rules. The discipline imposed was not arbitrary, capricious, unjust, nor an abuse of managerial discretion.

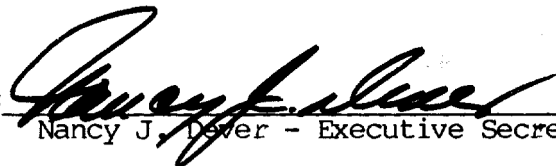
For the reasons contained herein, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1987.