

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer K. Dietrich, Alliance, Nebraska, was unfairly dismissed from service of the Burlington Northern Railroad Company, effective August 8, 1985.

2. That accordingly, the Carrier be ordered to make Mr. Dietrich whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his 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 were given due notice of hearing thereon.

Prior to the occurrences giving rise to the dispute herein, Claimant was employed as a Laborer at Carrier's Alliance, Nebraska, Diesel Shop.

The record shows that on June 23, 1985, Claimant requested permission from the Diesel Shop Supervisor to secure samples of various materials (soaps, lubricants, chemicals, etc.) used in the Diesel Shop. Claimant was advised by the Supervisor to contact the General Foreman. The General Foreman advised Claimant that such permission could not be granted.

On July 1, 1985, the General Foreman observed Claimant receive a package of sample bottles from another individual and then return to the tool room. Claimant was questioned by the General Foreman in the latter's office, at which time it was developed that Claimant had sample bottles in his locker.

The Supervisor and the Claimant went to Claimant's locker, where Claimant had numerous sample bottles containing samples of various greases, soaps, oils, etc., a tube of pipe sealant, a tube of loctite. There was a total of 43 sample bottles in Claimant's locker or in his personal automobile. There were also three baby food jars, containing what appeared to be fuel. The samples collected by Claimant were placed in charge of Carrier's Security Department.

On July 2, 1985, Claimant was notified by Carrier's Assistant Shop Superintendent to attend Investigation beginning at 9:00 A.M., July 9, 1985:

"...for the purpose of ascertaining the facts and determining responsibility in connection with your alleged failure to comply with instructions from the proper authority and your alleged unauthorized possession of Burlington Northern Railroad property which was found in your possession at approximately 3:40 p.m., July 1, 1985 while you were assigned as laborer Alliance Diesel Shop, Alliance, Nebraska...."

The Investigation was postponed to 9:00 A.M., July 22, 1985. A copy of the Transcript of the Investigation has been made a part of the record. We have reviewed the Transcript and find that the Investigation was conducted in a fair and impartial manner.

There was substantial evidence in the Investigation in support of the charge against the Claimant. The General Foreman testified that on June 24, 1985, he definitely instructed Claimant that he was not to take any samples of anything. Carrier's Claim Representative testified that Claimant had contacted him prior to July 1, 1985. "I advised him to contact his legal council (sic) because we could not work with him directly. I said that he is not to go on property and take these samples without prior arrangements being made with his legal council (sic) and I was to go with him when he got his samples...."

In answer to questions by Claimant's representative, the Carrier's Claim Representative testified to the effect that Claimant had told him that he had taken some of the samples off the property. There was also evidence by a Carrier's Special Agent that Claimant had stated to a Special Agent it was his intent to remove all the samples from the property for testing.

In the Investigation Claimant denied having taken any of the samples off Carrier's property.

Claimant was in violation of specific instructions in gathering the samples in the manner that he did and storing them in his locker, even though he may not have removed the samples from the property. No employee may properly decide for himself the instructions that he will comply with and those that he will ignore.

On July 25, 1985, Claimant was cited to attend an Investigation at 10:30 A.M., August 1, 1985:

"...for the purpose of ascertaining the facts and determining responsibility in connection with your alleged failure to comply with instructions from the proper authority and by your alleged failure to promptly report your personal injury sustained at approximately 3:30 p.m., July 1, 1985, while you were assigned as laborer, Alliance Diesel Shop, Alliance, Nebraska, which was not reported until July 25, 1985...."

In the Investigation conducted on August 1, 1985, on the charge of July 25, 1985, it was established that although Claimant contended that he had been injured on July 1, 1985, while being escorted to the General Foreman's office, he did not fill out a Personal Injury Report until instructed to do so by the Foreman of Diesel Shop on July 25, 1985. Claimant contended that he reported the alleged injury to the General Foreman while in the latter's office on July 1, 1985. The General Foreman testified that Claimant said nothing to him on July 1, 1985, about any injury. The Diesel Shop Foreman, who was present at the meeting in the General Foreman's office on July 1, 1985, testified that the Claimant, who worked under his jurisdiction, made no statement on July 1, 1985, concerning an injury. The Assistant General Foreman Locomotives, and the Foreman of Locomotives testified that they were present at the meeting in the General Foreman's office on July 1, 1985, and Claimant did not say anything about a personal injury being sustained on that date. The statement of Claimant in the August 1, 1985, Investigation was in conflict with the statements of others; however, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Also, conflicts in evidence do not warrant disturbing the action of the Carrier.

Rules 585 and 589 of Carrier's Safety Rules and General Rules, read:

585. "All accidents/incidents must be reported to immediate supervisor as soon as possible by first available means of communication. F-27 to follow to immediate supervisor, division superintendent and/or terminal or shop Superintendent."

589. "An employe having any knowledge or information concerning an accident or injury to himself or others must complete Form 12504, Report of Personal Injury, in triplicate before his tour of duty ends (or as soon as thereafter as possible), supplying the information required. All copies are to be sent to the superintendent."

Rule 574 of the same Safety Rules and General Rules reads:

574. "Employees who withhold information or fail to give factual report of any irregularity accident or violation of Rules will not be retained in the service."

On August 8, 1985, Claimant was notified of his dismissal from service as a result of the Investigations conducted on July 22, 1985, and August 1, 1985.

On careful review of the entire record, we find no proper basis for disturbing the discipline imposed by the Carrier.

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 25th day of February 1987.