

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11773
Docket No. 11583
88-2-88-2-90

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Communication Electronic Technician Donald LaFavor was unjustly withheld and suspended from service of the Burlington Northern Railroad, both prior to and following an unfair investigation beginning February 24, 1987 and continuing and concluding on June 2, 1987.
2. That the Burlington Northern Railroad failed to provide the required advance written notice of the specific and precise charges for which the subject investigation was held and for which Mr. LaFavor was assessed discipline and that it arbitrarily expanded their charges within the hearing without the required advance notice.
3. That the Burlington Northern Railroad violated the Agreement when it failed to provide the Employees with any, let alone reasonable, notice of its intent to postpone the subject investigation from March 25, 1987 to June 2, 1987.
4. That the Burlington Northern Railroad violated its own Safety and General Rules when it failed to provide Mr. LaFavor available training in high voltage Video Equipment, while at the same time requiring him to work on that equipment knowing that his training, experience and primary duties were in low voltage Radio Equipment.
5. That the Burlington Northern Railroad abused its managerial discretion when it unjustly investigated and disciplined Mr. LaFavor who was ill from on the job stress precipitated by unequal employee treatment and lack of the training necessary to perform the work requested of him.
6. That the Burlington Northern Railroad operated outside of its jurisdiction when it investigated and disciplined Mr. LaFavor while he was on medical leave of absence.
7. That the Burlington Northern Railroad failed to provide the required burden of proof regarding its charges against Mr. LaFavor to justify the discipline assessed.

8. That accordingly, the Burlington Northern Railroad be ordered to make Mr. LaFavor whole by compensating him for all wages lost while unjustly withheld and later suspended from service as the result of the subject incident. Claim also amounts to the removal of all record of the subject investigation and discipline from Mr. LaFavor's 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.

On January 30, 1987, the Claimant was employed as an electronics technician headquartered at the radio shop at Parkwater, Washington. Shortly after arriving for work, he was instructed by his immediate Supervisor to report to Yardley yard and work on the video equipment that had malfunctioned at that location. Upon receiving those instructions, the Claimant became upset. He then proceeded to call the Communications Supervisor who instructed him to comply with those instructions. After receiving the same instructions from the Supervisor to assist in the repair of the TV monitors, the Claimant went home claiming illness. The Carrier was not aware of the fact that the Claimant has been under the care of a psychiatrist in Minnesota since 1973 for job related stress; nor was the Carrier aware of the Claimant's fear of TV's due to a previous bad experience.

On February 2, 1987, the Claimant received a notice of Investigation for alleged failure to comply with instructions, alleged insubordination and alleged falsification for reason to be absent after being instructed to repair video equipment. After a Hearing held on June 2, 1987, the Claimant was informed on June 19, 1987 that the Investigation established him in violation of Rules 563, 564 and 570.

The Organization argues that the Carrier violated its own "safe course" rule and Rule 210(a) which requires employees to have proper instructions; that the Claimant trained in low voltage radio and that the Carrier required him to work on hi-voltage video equipment on January 30, 1987 while denying him available training.

The Carrier claims that the Claimant had not mentioned to anyone upon arrival at the job site that he was ill nor had he mentioned to anyone on that day or earlier that he had a "stressed out" condition. Carrier further states that the Claimant was not expected to complete the work himself and was offered the assistance of a communications technician whose purpose was to train

the Claimant and repair the TV monitors. Rather than accept the offer to learn, the Carrier claims that the Claimant went home sick.

The Board finds that the Claimant was remiss in not informing the Carrier of his years of job related psychiatric care and his fear of TV's. Consequently, the Claimant's behavior was understandably interpreted as insubordination. Claimant never requested the assistance of a shop steward. Such a request, with disclosure by the Claimant, could have avoided the resultant disruption. Management can only respond to what it knows at a particular time. Thus, the Board finds that on January 30, 1987, the Claimant was in violation of Rules 563, 564 & 570.

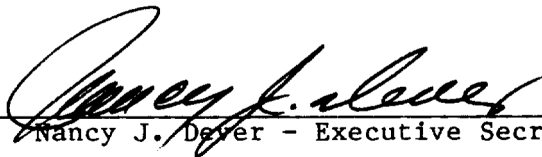
The Board has reviewed the numerous procedural arguments made pursuant to the Statement of Claim and finds that all necessary consideration was given to the Claimant regarding postponement of the Investigation and that all procedural requirements were met, it appearing that a complete record was developed at the Investigation.

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 4th day of October 1989.