

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Northeast Illinois Regional Commuter Railroad Corporation
(A Public Corporation)

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer J. Jett, Chicago, Illinois was unfairly dismissed from service of the Northeast Railroad Corporation effective July 26, 1990.

2. That accordingly, the Northeast Illinois Railroad Corporation be ordered to make Mr. Jett 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.

The Claimant was a laborer with the Carrier in service for eight years. He was dismissed as a result of an Investigation held on July 19, 1990. By letter dated July 26, 1990 the Claimant was dismissed from service for violations of Rules N, B and Q. The termination was effective on July 26, 1990. At the Claimant's request a hearing was held before the Second Division on July 31, 1991 beginning at 11:07 A.M. The Claimant was present at this Hearing.

It is the Carrier's position that it met the burden of proof in this matter. The Carrier was unable to locate the Claimant from approximately 8:05 to 8:40 A.M. on July 13, 1990. The Carrier's supervisors looked for the Claimant in his normal work area and were unable to find him. They did ultimately find him in a storage room outside of his work area. Prior to entering the room the two Carrier supervisors observed from the outside that there was no

light under the door and that the door was locked. When the door was opened with keys that another supervisor had in his possession, the Claimant was observed inside the closet with the lights off. The Claimant's story regarding why he was in the closet and the reason that the door was barred are simply not believable. There was no excuse for the Claimant to be in a dark, locked and barred closet and, therefore, he was in violation of various Carrier rules. This, coupled with the past disciplinary record of the Claimant, makes the disciplinary action of the Carrier appropriate and, therefore, the Carrier asked that the claim be denied.

The Organization stated the Claimant was an eight year employee of the Carrier. On July 13, 1990 the Claimant was at his work station performing his normal duties, which are cleaning lockers, washrooms, offices and rest rooms. Since the Claimant did not have the needed supplies, he went to a first floor closet in order to get some garbage bags. When he entered this room, he came upon some dead rats. The Carrier has a rat problem at this facility, and the Claimant took this dead rat and subsequently another one to the dumpster. While the Carrier was looking for the Claimant, he was busy disposing of these rats in a proper way. Subsequently, the Claimant saw a live rat and moved the floor buffer and other things around the storage room in order to find this live rat. Thus, the Claimant did not hear any calls or pages for him. When the two Carrier supervisors opened the door, the floor buffer which the Claimant had moved hit the light switch and turned off the lights. It is the Organization's position that the Claimant was not in the room with the light off. Several employees testified that they saw the rats and saw them in the dumpster. The dismissal of the Claimant for the quoted rules was inappropriate since the Claimant was in his assigned work area. The Organization noted that there was a dispute as to whether or not the paging system can be heard. It is the Organization's position that the punishment is not warranted in this case. The Carrier did not prove what the Claimant was doing in this closet and, therefore, did not meet the burden of proof.

Upon complete review of the evidence presented, the Board finds the testimony of the Claimant in this case to be completely incredible. He has provided no reasonable justification for his presence in this storage room. His testimony regarding the rats and the buffer is simply not believable. Therefore, the Board finds that the Carrier has conducted an appropriate and reasonable Investigation in accordance with the Rules. They have proven the violations with which the Claimant has been charged, and that in conjunction with the work record of the Claimant has led the Board to conclude that the penalty of dismissal is appropriate in this case. This Claimant has been the subject of substantial and repeated efforts to make him a reasonably good employee without success. Therefore, the claim will 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 2nd day of October 1991.