

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12241
Docket No. 11904
92-2-90-2-10

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. Under the current Shop Craft Agreement, dated October 1, 1979, Keith Miernicki, Crane Operator, Proctor Car Shop, Duluth, Missabe and Iron Range Railway Company, Proctor, Minnesota was unjustly dismissed on date of October 12, 1988 in violation of the current agreement, in particular Rule 28, as a result of an unfair and partial investigation held on September 1, 1988.

2. That accordingly, Electrician Keith Miernicki be made whole, restored to Carrier service with all seniority rights, vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus seven percent (7%) annual interest on all such lost wages. Also reimbursement for all losses sustained on account of loss of coverage under health and welfare and life insurance agreements during the time held out of service, all commencing on the date of October 12, 1988, and ending on the date the Claimant Keith Miernicki is restored to service, both dates inclusive and records show that Mr. Miernicki was on the payroll during this time for accumulation of retirement months, also that the Duluth, Missabe and Iron Range Railway Company remove from all its files and records any allusions or references to the investigation and action.

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.

Claimant was assigned to Carrier's Car Shop. On July 27, 1988, an Investigation was held pertaining to a charge of theft of company property by Claimant on July 18, 1988. Following that Investigation, the Carrier concluded the Claimant was guilty of the charge and dismissed him from service on August 9, 1988.

On August 4, 1988, the Claimant was charged with being dishonest at the July 27, 1988 Investigation. Following an Investigation on September 1, 1988, the Carrier concluded the Claimant was guilty of the charge and dismissed him from service a second time on October 12, 1988.

A Claim that Claimant was unjustly dismissed on August 9, 1988, was submitted to the Board. Under date of September 25, 1991, the Board rendered Second Division Award 12140 denying his Claim that he was unjustly dismissed, stating in part:

"...we conclude that the discipline imposed was fully supported. Claimant's dismissal will not be disturbed. The suspicious events suggesting theft were proven."

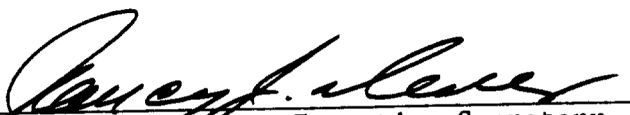
In light of the decision in Award 12140 we consider the instant question to now be "moot," because the issue of Claimant's honesty at the July 27, 1988 Investigation is academic, i.e., it no longer has a practical or useful significance.

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 15th day of January 1992.