

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12356  
Docket No. 12365  
92-2-91-2-155

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  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement, Rule 35 in particular the Burlington Northern Railroad Company unjustly dismissed Electrician Helper K. D. Machholz from its service following an investigation held on April 4, 1989.

2. That the investigation held on April 4, 1989 was not the fair and impartial investigation required by the governing Agreement and that the supreme penalty of dismissal was, in fact, unjust and a gross abuse of managerial discretion.

3. That accordingly, the Burlington Northern Railroad Company should be ordered to make Electrician Helper K. D. Machholz whole by restoring him to its service with seniority rights unimpaired, restore all rights benefits and privileges due him under the agreement which were adversely effected by his dismissal and, further to compensate him eight (8) hours per day at the pro rate for all time lost because of his dismissal beginning April 4, 1989 and continuing until he is restored to service; in addition, Electrician Helper Machholzs' personal record should be cleared of all reference to the investigation and dismissal.

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 March 17, 1989, the Claimant was employed as an Electrician Helper at Carrier's Diesel Facility at West Burlington, Iowa with assigned hours 4:00 P.M. to 12 Midnight. At approximately 9:30 P.M. the Claimant had a confrontation with the Foreman of Locomotives during which he stated he was going home sick. Shortly thereafter the Claimant left the Carrier's premises. Under date of March 21, 1989 the Claimant was notified to attend an Investigation, charged as follows:

"Alleged absenting yourself from duty without permission on March 17, 1989."

Under date of April 21, 1989, the Claimant was notified he was dismissed from service.

We find, contrary to the Employees' argument, that the Investigation was conducted in a fair and impartial manner. The Claimant and his representative were given every opportunity to question witnesses and to present evidence in support of their position. Also, contrary to the Employees' argument, we consider the charge to have been precise enough for the Claimant to prepare a proper defense. Insofar as discussions taking place between Carrier Officers prior to the Investigation the Second Division in Award 11915, stated:

"It is true there were discussions prior to the Investigation, however, such discussions are normal and are necessary to determine if an Investigation is warranted. Many times such discussions bring out the fact that there is no basis for holding an Investigation."

We cannot find where the pre-Investigation discussions in this case were in any way prejudicial to the Claimant.

Claimant's excuse in this case for leaving work early was that he was sick and had his Foreman's approval to go home. At the Investigation his Foreman testified, in part, as follows:

- "38. Q. Mr. Graf, why didn't Mr. Machholz complete his shift?  
A. We had a confrontation, he became angry and said he was going home sick.
39. Q. Mr. Graf, did Mr. Machholz have your permission to leave work early?  
A. No, he did not.
40. Q. Mr. Graf, did Mr. Machholz state to you that he wanted to leave work earlier in the shift?  
A. No he did not.

41. Q. Was there any indication to you that he was sick at any time during the shift?  
A. No there was not.
42. Q. Mr. Graf, at what time did Mr. Machholz state that he wanted to leave work?  
A. I guess it was approximately 9:30.
43. Q. Mr. Graf, what was Mr. Machholz's reason for saying this?  
A. I don't know. He was angry.
44. Q. Mr. Graf, did Mr. Machholz make any statement to you that he might have felt ill at any time prior to 9:30 or your discussion with him?  
A. No, he did not.
45. Q. Mr. Graf, when Mr. Machholz said that he was going home sick, did you say anything to him at that time?  
A. Yes. I told him that he had better not.
46. Q. Mr. Graf, what was his reply?  
A. There was no reply."

While Claimant stated during the Investigation that he was ill prior to 9:30 P.M. and that other employees were aware that he was ill he did not produce any witnesses to verify his statement.

After carefully reviewing the Investigation testimony, some of which was conflicting, we have concluded that the Carrier has met the burden of proof in this case in proving that Claimant left work early on March 17, 1989, without proper authority and without good reason.

In determining the discipline to be assessed the Carrier took into account the Claimant's past discipline record. The Claimant's record indicated that over a twelve (12) year period, the Claimant had seven (7) disciplinary entries on his record including a ten (10) day suspension for being quarrelsome; 30 days for insubordination; 60 days for sleeping; 60 days for being absent from work area; five (5) days for being absent without proper authority. The latter four assessments of discipline were for incidents that took place within 3 1/2 years of March 17, 1989. Under the circumstances we can find no basis for disturbing the Carrier's action in this case.

A W A R D

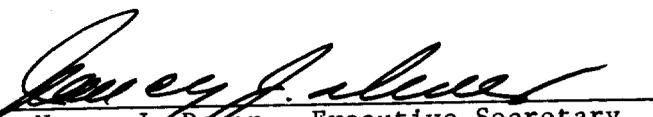
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.