

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12626
Docket No. 12563
93-2-92-2-86

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(Norfolk Southern Railway Company (formerly
(Southern Railway Company)

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railway Company (former Southern Railway Company) vio-lated the controlling agreement when they unjustly suspended Student Electrician A. J. Rice from service for thirty (30) days, December 7, 1990 through January 5, 1991, at their Chattanooga Diesel Shop in Chattanooga, Tennessee.
2. That accordingly, the Norfolk Southern Railway Company (former Southern Railway Company), be ordered to compensate Student Electrician A. J. Rice for all loss incurred and reinstate him with all rights unimpaired, account of the aforesaid unjust dismissal in violation of the agreement."

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 employe 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.

By letter dated November 13, 1990, the Claimant and Ms. B. K. Hixson ("Hixson"), a Student Electrician, were instructed to appear for a formal investigation. The Carrier in its letter in pertinent part stated:

- "1. Mr. Rice and Ms. Hixson were observed kissing and embracing each other at approximately 1:00 A.M. to 3:00 A.M. on November 3, 1990, while on duty and under pay.
2. Mr. Rice and Ms. Hixson failed to follow supervisor Evans' verbal instructions issued on or about October 12, 1990 not to fraternize with each other while on duty and under pay.
3. Mr. Brazleton was observed rubbing Ms. Hixson's leg while engaging in remarks that had sexual overtones on or about October 5, 1990 in the fuel rack shanty while on duty and under pay.
4. Ms. Hixson used lewd and obscene language, teasing, joking and remarks that have sexual overtones among mixed-sex employees.
5. Ms. Hixson touched and pinched male employees."

Mr. Brazleton identified above in charge 3 was the subject of a separate investigation held on November 27, 1990. His case (Docket No. 12565) is also before this Board. The charges noted above which concern Claimant Rice ("Rice") and Hixson were investigated at the same hearing held on November 28, 1990. However, appeals have been separately filed. This case involved Rice's claim.

The transcript of the hearing held on November 28, 1990 is extremely lengthy and touches upon many issues and matters that have questionable relevance to the charges. However, given the nature of the events that led to the charges and because the Hearing Officer clearly made every reasonable effort to afford everyone a fair and full opportunity to present their respective positions, the hearing cannot be fairly faulted.

Certain procedural objections have been raised and, after due consideration, we find no basis to set these proceedings aside on those grounds.

With respect to the merits of charge 1, we find substantial evidence to support the charge. Testimony adduced at the hearing, including that of the primary parties, supports the charge. The Claimant's defense in essence is that, if these actions did occur, they took place during properly authorized breaks and he properly performed all of his assigned duties. However, such a position begs the question. The charge goes to the issue of proper behavior in the workplace. The Carrier's position that kissing and embrac-

ing between its employees cannot be condoned on its property is so fundamental that it should not require any explanation.

With respect to the second charge, Rice denies that he was instructed to not fraternize with Hixson while on duty. Supervisor Evans ("Evans") testified that he told both Hixson and Rice to refrain from the identified behavior as noted in the charge. Hixson testified that Evans instructed her not to fraternize with Rice and that she should convey this instruction to Rice. Hixson further testified that she "did mention" the instruction to Rice. Accordingly, the Hearing Officer and, in turn, the Board is confronted with a credibility question. Under the circumstances, the Board finds that it has no basis for not adhering to a basic and well-established principle that the trier of the facts is vested with the exclusive authority to resolve conflicts of testimony.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 1st day of December 1993.