

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12743
Docket No. 12628
94-2-92-2-188

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "(1) That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the applicable provisions of Rule 35 of the July 1, 1921 Joint Agreement as specifically amended by Agreement dated July 1, 1979 when, subsequent to an investigation the Carrier unjustly and improperly dismissed from service Proviso Diesel Shop Machinist P. Bernaeyge (hereinafter referred to as the "Claimant").
- (2) That accordingly, the Carrier be ordered to
- (a) Restore Claimant to service with all seniority and vacation rights unimpaired.
 - (b) Compensate Claimant for all time lost from service commencing August 23, 1991.
 - (c) Make Claimant whole for all health and welfare and insurance benefits lost while dismissed from service.
 - (d) Expunge from Claimant's personal record any and all reference to the investigation proceedings and the discipline subsequently imposed."

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 appeared for an hearing before the Board in Chicago, Illinois, on April 18, 1994.

Claimant was employed as a Wheel Machine Operator at Carrier's Proviso Diesel Shop. On July 23, 1991, the Shop Manager and the General Foreman of the Diesel Ramp were engaged in a safety inspection. Claimant was observed working on a unit in the wheel-truing area on Track No. 5 with no "Blue Flag" on the unit. Claimant was questioned about the absence of a Blue Flag and stated that he must have forgotten to put it up. As a result of the incident, on July 23, 1991, he was charged as follows and directed to appear at a hearing in the matter.

"CHARGE: Your responsibility for your failure to properly perform your duties on July 23, 1991 at approximately 10:45 a.m. when you failed to properly blue flag Unit 8537."

The hearing was held in the matter on August 20, 1991. As a result of that hearing, Claimant was found guilty as charged and dismissed from Carrier's service. A transcript of that hearing has been made a part of the record of this case. A review of that record reveals that Claimant was afforded all rights and privileges guaranteed by the Agreement and that a full and fair hearing was held. The review also reveals that Claimant admitted to having forgotten to properly place a Blue Flag on the unit. Thus, he is guilty as charged.

Standing alone, a blue flag violation is a serious Rule infraction that calls for severe discipline. Safety in general and adherence to Federal Blue Flag Regulations in particular is given top priority in the Railroad Industry. Claimant has a less than stellar work and discipline record. He has numerous Letters of Warning for absenteeism. He has been involved in numerous lost time accidents over his years with Carrier and he has received a five-and-a ten-day Suspension, under Carrier's Discipline Policy. Carrier has argued in this record that in light of Claimant's record, its progressive discipline policy requires that dismissal for such a severe infraction is more than appropriate. This Board has no authority to modify Carrier's actions in this case. We cannot conclude that Claimant's dismissal from service is arbitrary or capricious, given the total record before us.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994. .