

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13035
Docket No. 12969
96-2-94-2-132

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement, Rules 16 and 35, in particular, Mechanical Department Electrician R. J. Rehman was unjustly suspended from service for a period of five (5) work days as a result of an unwarranted investigation held on August 9, 1993.
2. That the investigation and resulting discipline was not fair and impartial as required by the governing Agreement.
3. That the Burlington Northern Railroad Company should be directed to make R. J. Rehman whole for all wages, rights, benefits and privileges which have been denied him and in addition, the entry of investigation and discipline assessed against him to be removed from his personal 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 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 waived right of appearance at hearing thereon.

At the time this incident arose, Claimant was assigned as an Electrician at the West Burlington Shop, with hours of 4:00 p.m. to midnight. On June 21, 1993, Claimant called his supervisor at approximately 3:45 p.m. and requested to be off for personal business that night. Claimant was informed by the general foreman that he could not be off. Claimant did not show up for work. By letter of June 24, 1993, Claimant was instructed to attend an Investigation "for the purpose of ascertaining the facts and determining your responsibility in connection with [his] allegedly absents [himself] from duty without proper authority on June 21, 1993."

The Investigation was held on August 9, 1993, following several mutually agreeable postponements. After the investigation, Claimant was notified that he was assessed a five work day suspension. The Organization appealed Claimant's discipline, and it was subsequently processed in the usual manner, including conference on the property April 25, 1994, after which it remained unresolved.

At the outset the Employees state that Claimant was not afforded a fair and impartial investigation as provided in the Agreement between the Parties. In particular, the Employees maintain that the reasons provided in the notice of investigation were unclear, and that the hearing itself was not fair. A review of the record before us, fails to support the Employees' position in this regard.

With respect to the merits of the claim, it is the Carrier's position that Claimant had not received permission to be absent from work on the date in question, because he was needed. When he called, fifteen minutes before his shift was to begin, his general foreman specifically denied Claimant's request. The Carrier notes that Claimant then became argumentative and informed the foreman that he would not be at work. Although the foreman warned Claimant of possible consequences of failing to report to work, Claimant nevertheless chose not to report. The Carrier maintains that, under the circumstances, the discipline of five work days was lenient.

It is the position of the Employees that the general foreman arbitrarily denied Claimant his legitimate request to take time off on the night on question. Claimant explained that he needed to be home, because his wife was concerned about a transient living in his garage over the weekend, and he had to wait for the locksmith to arrive. The foreman's denial was in direct violation of Rule 16 (b) of the Agreement which reads:

"The arbitrary refusal of a reasonable amount of leave of absence of employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be handled as unjust treatment under these rules."

The Employees maintain that Claimant gave his general foreman a reasonable explanation of his need to take the time off, and the foreman declined his request simply on the basis of Claimant's prior absenteeism record.

Claimant's previous attendance record certainly gave the general foreman a basis for doubting the bona fides of Claimant's request for time off, so close to the time his shift was to start. Moreover, a review of the transcript reveals inconsistencies in Claimant's own testimony concerning what, exactly, was the nature of the "personal business" to which he allegedly had to attend. In view of the foregoing, the Board does not find that the Carrier violated Rule 16 (supra). Further, in light of Claimant's prior attendance record, the discipline assessed was neither arbitrary nor excessive.

AWARD

Claim denied.

ORDER

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 21st day of August 1996.