

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13148
Docket No. 13007
97-2-95-2-34**

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

**(International Brotherhood of Electrical Workers
(System Council No. 16**

PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement, Rule 30 in particular, System Electrician Larry H. Carter was unjustly suspended from service for a period of thirty (30) days as the result of an unfair and biased investigation held on January 26, 1994. Further, Larry H. Carter was required to make restitution of \$138.87 to the Burlington Northern Railroad Company;**
- 2. That the investigation conducted was not fair and impartial as required by the governing Agreement, and;**
- 3. That the Burlington Northern Railroad Company should be directed to make System Electrician Larry H. Carter 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. The restitution assessed of \$138.87 should also be suspended."**

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 were given due notice of hearing thereon.

On November 30, 1993, Carrier issued Claimant a Notice of Investigation directing him to

"...Attend investigation in the Trainmaster's Conference Room, Great Falls Yard Office, Great Falls, Montana, at 1 p.m., December 9, 1993, for the purpose of ascertaining the facts and determining responsibility, if any, in connection with you alleged misuse of a Company credit card, as disclosed to Burlington Northern Operating Officer on November 24, 1993."

Following the Investigation Claimant was advised by Carrier that he was assessed a 30 day actual suspension. In addition, he was directed to make restitution to the Carrier in the amount of \$138.87.

It is the position of the Organization that the Claimant was not afforded a fair and impartial Investigation in that: 1) he was not advised of the specific charges against him; 2) since Claimant's Supervisor was also the Hearing Officer, he could not be unbiased; and 3) Claimant's prior infractions were improperly mentioned by Carrier during the Hearing. A careful review of the record does not support the Organization's contentions. It is apparent from the Notice of Investigation, and the Organization's vigorous defense at the Hearing, that Claimant was well aware of the infraction with which he had been charged. Further, there is no evidence that the Hearing Officer was unduly biased in his conduct of the Hearing. Finally, although the Board agrees that past "bad acts" may not be offered as probative of a present alleged misdeed, there is no evidence that they were the basis upon which the Carrier determined Claimant's culpability.

With respect to the merits of this case, the transcript of the Hearing indicates that not only did Claimant misuse Carrier's credit card by using it for personal calls, but also that he was well aware that such behavior was prohibited. Accordingly, the Carrier has met its burden of persuasion, without regard to Claimant's past discipline record. In light of the seriousness of Claimant's misdeed, Carrier's assessment of a 30 day actual suspension was neither excessive nor arbitrary. Moreover, restitution to Carrier of the moneys involved is entirely appropriate.

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 8th day of September 1997.