

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13241
Docket No. 13149
98-2-96-2-51

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

(International Brotherhood of Electrical Workers
(Local Union No. 871

PARTIES TO DISPUTE: (

(Florida East Coast Railway Company

STATEMENT OF CLAIM:

- “1. That the Florida East Coast Railroad Company, in violation of Agreement Rule 24, unjustly dismissed Machinist R.T. Jennings and C.F. Sommerkamp from service effective August 18, 1994, as a result of formal investigation on August 10, 1994 and accordingly;
2. That the Florida East Coast Railroad Company restore Machinists R.T. Jennings and C.F. Sommerkamp to service with seniority rights unimpaired, and;
3. That the Florida East Coast Railroad Company make Machinists R.T. Jennings and C.F. Sommerkamp whole for all time lost as a result of the unjust discipline, and;
4. That the Florida East Coast Railroad Company take necessary action to credit Machinists R.T. Jennings and C.F. Sommerkamp for Railroad Retirement, Vacation and Personal Day purposes; and make all contractual health and welfare premium payments to which Claimants would have been entitled by reason of their continued employment.”

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.

Claimants were dismissed from the service of the Carrier on August 18, 1994 as a result of an Investigation held on August 10, 1994.

The record of the transcript reveals the Claimants, by their own admission failed to place blue flag signals protecting the track which they were working. In addition, the switch providing access to the track was lined for entrance. As a result of these safety violations the Carrier was fined \$5,000 by the Federal Railroad Administration.

The Organization argues the Claimants were not given a fair and impartial Hearing and that the discipline assessed was unwarranted and was not fair and impartial.

The Carrier argues that the safety violations were severe and dismissal is warranted.

There is no question of the Claimants' guilt. In a similar case before this Board in Second Division Award 12743 the Board held:

"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."

In this case the Board concurs with the above finding. However, the employees in this case do not have a deplorable work record. Therefore, the Board finds the discipline assessed to be excessive and orders the Claimants to be returned to service, with seniority unimpaired, but without any pay for time lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 30th day of March 1998.