

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13544

Docket No. 13441

00-2-99-2-37

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

**(International Association of Machinists and
(Aerospace Workers**

PARTIES TO DISPUTE:

**(Burlington Northern Santa Fe Railway Company
((former Atchison, Topeka and Santa Fe Railway Co.)**

STATEMENT OF CLAIM:

“Claim of Employee:

That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly dismissed Kansas City, Kansas Machinist Adam B. Shaw (hereinafter referred to as the “Claimant”) for allegedly falsifying a personal injury and late reporting of same.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40 (i) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter 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 were given due notice of hearing thereon.

Shortly after hiring on as a Machinist at Carrier's Kansas City, KS facilities on July 10, 1997, the Claimant was dismissed by written notice of termination dated October 28, 1997. The Carrier's certified letter in that regard stated as follows:

"Please be advised that your seniority and employment are being terminated effective October 28, 1997 due to you being absent for ten days or more without proper authority from 10-17-97 through 10-27-97.

If you desire you may request an investigation under Rule 40 of the current Agreement within 20 days of this notice."

While his challenge to the above discharge was pending, the Claimant was dismissed for both reporting an injury untimely and falsifying a personal injury.

In its Second Division Award 13543 the Board has concurrently ruled upon and rejected the Organization's contentions that the Claimant's initial termination effective October 28, 1997 was arbitrary, discriminatory and excessive. In view of those findings, the instant claim is moot and must be dismissed.

AWARD

Claim dismissed.

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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 25th day of September, 2000.