

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13710

Docket No. 13631

03-2-01-2-38

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

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway**

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Electrician David A. Terrell was unjustly dismissed by the Burlington Northern/Santa Fe Railroad Company following an investigation held on May 3, 2000.**
- 2. That the investigation held on May 3, 2000 was not a fair and impartial investigation required by the terms of the current Agreement.**
- 3. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to return Electrician David. A. Terrell to its service immediately and to make him whole with respect to all lost wages, rights, benefits and privileges which were adversely affected as a result of the investigation. Further, that all record of the investigation and discipline assessed be removed from David A. Terrell’s 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.

On May 16, 2000, the Carrier dismissed the Claimant from its service. As a result of an Investigation held on May 3, 2000, the Carrier found that the Claimant violated Rules S-28.6, S-28.17, S-28.13 and S-28.15 on April 15, 2000.

The facts in this case are not in dispute. On April 13, 2000, the Claimant asked to be off on April 15, 2000. The Carrier's Foreman denied the request because two Electricians had already been granted the day off.

On April 15, 2000, the Claimant called the Carrier to lay off sick. At 9:30 P.M. the Claimant was seen tending bar at the Claimant's family emporium.

The Claimant argued he had a sore back and was seeing a chiropractor beginning April 12, 2000. Allegedly the doctor placed the Claimant on restricted duty. However, the record is void of any medical evidence as to the Claimant's condition. In fact the Claimant worked April 13 and 14, and worked 64 hours in the eight day period beginning April 18, 2000.

The Claimant is a short term employee with the Carrier. It is obvious from the record the Claimant wanted to be off to work in the family business. When denied by the Carrier, the Claimant lied to the Carrier Official by laying off sick.

The Carrier has met its burden in proving the Claimant violated its Rules. There is no reason for the Board to overturn the action of the Carrier in this case.

AWARD

Claim denied.

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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 28th day of February 2003.