

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13716

Docket No. 13629

03-2-01-2-31

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

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Canadian Pacific Railway/Soo Line Railroad Company

STATEMENT OF CLAIM:

“The Soo Line Railroad Company (herein after refer to as the “Carrier”) violated the controlling agreement such as, but not limited to Rule 31 when it unjustly and improperly dismissed from service Machinist Eisenhower Hunt, St. Paul, Minnesota.

Accordingly, the Carrier reinstate to service Machinist Eisenhower Hunt, (herein after referred to as the “Claimant”) with his seniority rights unimpaired, with the payment of all time lost and all other rights and privileges restored due to being unjustly and improperly dismissed from service.”

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 September 8, 2000, the Carrier dismissed the Claimant from its service. As a result of an Investigation held on August 22, 2000 the Carrier found the Claimant was excessively absent on July 15, 16, 29, 30, 31 and August 1 and 2, 2000.

The Organization makes the argument the Claimant was denied a fair and impartial Hearing when the same Carrier Officer was the Charging Officer as well as the First Appeal Officer. Many tribunals have held that the Carrier runs the risk of showing bias when one Carrier Officer assumes too many roles in the discipline process. In this case for the Organization to make an appeal to the Officer of the Carrier who assessed the dismissal is, at best a futile effort. However, the Claimant still had the appeal to the Carrier's Highest Designated Officer, who has the authority to amend the discipline. To avoid such arguments many Carriers have discipline cases appealed directly to the HDO. The fact that the Claimant was denied a valid appeal at the first level did not deny the Claimant an appropriate appeal at a higher level.

As to the merits of the case there is no argument the Claimant was absent as charged. The Claimant testified during the investigation as follows:

"A. I was at Hennepin County Medical Center because of my bronchitis, and my pulled muscle, I got a, I have a, you all know I was off of work for a year and a half for my back. Everybody knows I have problems with my back. Okay, I got that from my job. But, this other problem here, I was born with it. I was born with bronchitis. This here with my back being hurt, I don't know when my back will go out on me, you know, my neck and my back. You know, I went to the hospital for a whole year with this. I'm not asking for sympathy, or nothing like that from none of you all, I know you got your own responsibility and I got mine. But I'm going through some problem. You know, I'm human just like you, all of you sitting in here, you know. I have problems: I'm going through divorce, I'm going through I've had my car taken, my driving license. I'm just, you know, I've started drinking, I'm drinking, I've got problems, I've got real bad problems, I'm damn near alcoholic, and I need some help, you know. I just need a chance to try to better myself. I've been here a long time, and I'm not going to sit here and say it's you all fault. Everything that happen to me is my fault. I need my job.

* * *

- A. Yeah, I got to, because I've been off work all this time, I got behind in all my bills, the (inaudible) is due, my rent is due, my light bill is due. I got to go to court because they took my driver's license. I've got all this right here. They just mess me up, I'm messed up, you know?"

This was the third time in the first eight months of the year 2000 that the Claimant was disciplined for absenteeism. The Carrier has met its burden in proving the Claimant violated its Rules. While the Claimant has sought help for his apparent problems, the Board does not have the authority to reinstate the Claimant on a leniency basis. That authority rests with the Carrier.

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 20th day of March 2003.