

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13742

Docket No. 13638

03-2-01-2-44

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 current April 1, 1983 Agreement, Rule 35 in particular, Electrician Mark Billingslea was unjustly disciplined by the Burlington Northern/Santa Fe Railroad Company following an investigation held on November 17, 1999.
2. That the investigation held on November 17, 1999 was not a fair and impartial investigation under the terms required by the rules of the controlling Agreement and that the discipline assessed Electrician Mark Billingslea was excessive and unwarranted.
3. That accordingly the Burlington Northern/Santa Fe Railroad Company be directed to make Electrician Mark Billingslea whole with respect to all lost wages, rights, benefits and privileges which were adversely effected by his suspension. Further, that all record of the charges, investigation and discipline be removed from Electrician Mark Billingslea’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 November 29, 1999 the Carrier issued the Claimant a five day deferred suspension. As a result of an Investigation held on November 17, 1999 the Carrier found the Claimant violated Rules S-28.6 and S-28.1.2 on November 1, 1999.

The facts in this case are not in dispute. On November 1, 1999 the Claimant's responsibilities included assisting in the attaching of remote power cables (480 volt) to suburban passenger car 768 and the subsequent powering up of the car using the remote power. The Claimant pressed the wrong button on the console, which instead of putting power to the car, operated a remote motor that pulled the power cable up and away from the passenger car. Before the Claimant could get the power cut to the motor by use of the emergency stop button, the power cable and the southeast receptacle on the passenger car were damaged.

During the Investigation the Claimant admitted to pushing the wrong button.

The Organization argues the Carrier failed to prove the Claimant violated its Rules, which read:

"S-28.6 Conduct: employees must not be:

2) negligent, and;

S-28.1.2 Alert and Attentive. Employees must be careful to prevent injury to themselves or others and must be alert and attentive while performing their duties and plan their work to avoid injury."

It is obvious the Claimant was inattentive to his duties when he negligently pushed the wrong button.

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The Carrier has proven the Claimant violated its Rules. The Claimant has a little over one year service with the Carrier. A five day deferred suspension is not excessive.

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 30th day of June 2003.