

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14056
Docket No. 13930
13-2-NRAB-00002-110013**

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

**(International Association of Machinists and Aerospace
Workers
PARTIES TO DISPUTE: (
(Dakota, Minnesota and Eastern Railroad**

STATEMENT OF CLAIM:

- “1. The Dakota, Minnesota and Eastern Railroad (hereinafter referred to as ‘Carrier’) violated the rights of Working Foreman Chad Beck and the DM&E Employee Handbook, specifically Article 708, when it improperly and unjustly dismissed from service Working Foreman Chad Beck, Huron, South Dakota.
2. Accordingly, the Dakota, Minnesota and Eastern Railroad return Working Foreman Chad Beck (hereinafter referred to as ‘Claimant’) to service with the payment of all time lost and all other rights and privileges restored.”

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.

Claimant Beck was dismissed from service in a Carrier determination following a Hearing conducted pursuant to Article 708, "Disciplinary Process/Problem Resolution," of the Carrier's Employee Handbook following a finding that he had improperly removed blue flag protection from a locomotive track and thereby left unprotected two employees who were working on a locomotive at the Carrier's repair and maintenance facility in Huron, South Dakota, on July 3, 2010. The degree of discipline assessed also took into account his past discipline record. According to the Carrier, the current offense constituted a violation of Rule M-22, part 5, of the Safety Rules and Recommended Practices for Mechanical Department Employees, General Code of Operating Rule 5.13, Sub A, Volume 29, FRA Section 218.23(4)b, and Company Policy QSTP-202.

The Carrier asserts that the Claimant was accorded an informal fact-finding Hearing on July 6, 2010 pursuant to Article 708 of its Employee Handbook. Article 708 reads in part as follows:

"DM&E relies upon an informal discipline procedure, with emphasis on prevention, education, and rehabilitation, rather than punishment.

Formal notices and arbitrary time limits are not required. However, managers may and in serious cases are encouraged to notify employees in writing of investigations . . . that may result in significant discipline.

* * *

Where appropriate managers are encouraged to remind employees of their representation rights.

When formal or informal fact-finding meetings are involved, at Employee's option he may be assisted by an Employee Committee Member or Employee Advocate."

The Organization was certified by the National Mediation Board in Docket No. R-7246 to be the duly authorized representative of employees in the craft or class of

Mechanics, Apprentices, and Working Foremen on the Carrier effective June 6, 2010 - one month prior to the Claimant's dismissal from service.

An attempt by the Organization to represent the Claimant in appeal of his dismissal was rejected by the Carrier. In this respect, the Carrier asserts that it is a well-established principle under the Railway Labor Act that a union has no jurisdiction to represent or handle issues on an employee's behalf if there is no governing collective bargaining agreement to which the union is signatory, and that there is no collective bargaining agreement between it and the Organization.

In this same connection, the Carrier asks the Board to dismiss the case for lack of jurisdiction because there is no collective bargaining agreement between it and the Organization.

The Organization does not dispute the fact that no formal collective bargaining agreement exists between it and the Carrier, or was in effect at the time the Claimant was terminated from service. However, the Organization maintains that it was entitled to represent the Claimant as the certified bargaining agent at the Hearing and on appeal notwithstanding the fact that the Carrier had taken its action against the Claimant pursuant to Article 708 of the Carrier's Employee Handbook.

The Board finds merit in the Carrier's argument pertaining to jurisdiction and will, therefore, dismiss the case in keeping with those past decisions of the Board which have consistently held that the Board lacks jurisdiction to hear appeals when there is no collective bargaining agreement to interpret.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of April 2013.