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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6443
Docket No. 6235
2-BN-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That under the current agreement, Mr. W. L. Burton, Carman, was unjustly held out of service on August 16, 1970 and unjustly dismissed September 16, 1970, from the service of Burlington Northern Inc. at Murray Yard, North Kansas City, Missouri.
2. That Burlington Northern Inc. violated the agreement on August 16, 1970, when they failed to notify Carman W. L. Burton of the reason he was being held out of service pending investigation.
3. That Burlington Northern Inc. violated the purpose and intent of the agreement when they failed to furnish proper transcript of investigation.
4. That accordingly, the Burlington Northern Inc. be ordered to restore the aforesaid employe to active service and reimburse him for all time lost during his suspension, restoration of all fringe benefits, including vacation, seniority, pass rights, health and welfare premiums, all paid for by carrier, and compensation for any costs in connection with such benefits incurring during his suspension.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Petitioner initially urges setting aside the dismissal of Claimant from Carrier's service on the ground that the procedure followed by the Carrier was defective and contrary to the appropriate rules of the Controlling Agreement.

Petitioner's approach lacks merit. Even if the General Car Foreman's memorandum (Carrier's Exhibit No. 23) were not valid, Claimant was aware of the incident which resulted in his being taken out of service pending investigation. Furthermore, this Board has ruled that it is incumbent upon Claimant or his organization to assert its protest concerning initial process at the hearing, which was not done in this case. The variance between the notice of hearing specification of the matter to be investigated and the grounds for dismissal set forth subsequent thereto was not violative of any rule or the rights of the Claimant. The citation of infringed upon operating rules by the conduct which was the subject of the investigation, duly set forth in notice thereof, was an embellishment of the basic charge and did not materially effect the nature of the inquiry. Claimant and his representative are employes of long standing with the Carrier. They were or should have been cognizant of the operating rules and the extent that the factors to be reviewed might constitute a breach thereof. The inadequacies and errors in the transcript were satisfactorily overcome by the allowance of a tape recording of the proceedings. Carrier accepted the corrections proffered by Petitioner. Although the minutes contained errors, they were in understandable form and were sufficiently accurate on significant testimony. Carrier is urged, nevertheless, to make certain that the record of hearings are as precise as humanly possible, since great reliance is placed thereon by all concerned and involved.

On the merits, this record more than adequately supports the findings of the Carrier Officer who assessed the punishment against the Claimant. Despite certain errors of judgment on the part of supervision on the scene on August 16, 1970, Claimant's actions testified to, corroborated, and in meaningful parts, admitted, were reprehensible and disclosed a propensity for a lack of control which cannot be allowed to prevail, particularly in an industry where cool heads are essential to maintain the safety of employees, passengers, and the property of those utilizing its services. (See First Division Award 19538)

This Board has established, in accordance with the authority vested in us by the Railway Labor Act and the Controlling Agreements, the standards which will be applied in dealing with disputes concerning disciplinary action taken against employes. Given that Carrier had substantial evidence to support a finding of infraction of reasonable rules or expected appropriate employe conduct and performance, it is within the employer's discretion to determine the discipline to be imposed. We will not interfere therewith, absent a clear showing that the penalty was arbitrary, capricious, unreasonable or excessive. There is no basis in this record to permit a reversal of Carrier's action.

Claimant should have accepted Carrier's offer of reinstatement, on a leniency basis, apparently made in recognition of his many years of service, with alacrity. Petitioner is urged to ascertain whether said offer is still open and if it is, arrange for Claimant to take advantage thereof.

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Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1973.