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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6445
Docket No. 6249
2-BN-EW-'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.
((Electricians)
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician L. L. Garlock was unjustly suspended from the service of the Carrier for a period of thirty (30) days following investigation held at Livingston, Montana on February 9, 1971.
2. That accordingly, the Carrier be ordered to make the aforementioned Electrician whole by compensating him for all wage loss suffered from March 8, 1971 through April 6, 1971, both dates inclusive plus six (6) percent interest on all lost wages to be compounded quarterly until claim is adjusted.

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.

In the extensive number of disputes involving disciplinary action taken against employes by their employer which this Board has been called upon to review, our Awards have endeavored to delineate the principles by which we are guided in such matters. Pertinent to the controversy before us are the concepts summarized in some of our recent decisions as follows:

"... this Board is not a tribunal of original jurisdiction. Our function, particularly in discipline cases, as established by the Railway Labor Act, as amended, is to review the record; ascertain whether the Controlling Agreement had been complied with; the Claimants were afforded due process; there was substantial evidence to sustain a finding of just and sufficient cause for the discipline imposed; and that the action taken by the Carrier was not arbitrary, capricious or unreasonable. Award 6368."

"This Board has afforded great latitude to carriers in their administration of discipline in order to assure proper, safe, efficient and economical operation and to protect their property and that of their customers. ... Award 6395."

"This Board does not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory ... when the degree of discipline is not reasonably related to the seriousness of the proven offense." Award 6198. (See also Awards 4195, 4098, 4000, and 3874).

"This Board has regularly refused to interfere with the determination of the employers as to disciplinary action taken for proven infractions. But we reserved the right to correct a penalty which is excessive or unreasonable in the premises. See Awards 5703 (Ives) and 3894 (Daugherty). ..." Award 6236

Mindful of the above, we studied the record before us. As indicated, the evaluation of the witnesses and their testimony by the officer duly designated, in accordance with the terms of the controlling agreement, will not be disturbed, absent patent error. The finding that claimant's conduct over a period of time was of a provocative nature which aroused the ire of his fellow worker who was unquestionably the aggressor in the altercation involved, is accepted. However, the interpretation placed by Carrier upon his efforts to protect himself against serious injury appears to be unrealistic and to have unduly colored its judgment as to the appropriate penalty to impose.

In Third Division Award 19037 (Cull), the prevailing, acceptable doctrine in our society was succinctly stated as follows:

"... it is well established that the purpose of administering discipline to employes for infractions of rules is not to inflict punishment but rather to rehabilitate, correct and guide employes in the proper performance of their assigned tasks. ..."

We do not find that the loss of one month's pay was necessary to alert claimant and others to use good judgment and avoid arousing others at work with them to a point where tempers will flare and physical violence ensue. A suspension for two weeks would have the desired effect. The thirty days suspension must be held to have been excessive and claimant should be reimbursed for wages lost for the period March 23 through April 6, 1971, less any earnings he may have had from other employment during such period.

As expressed in our Awards 2675, 4659, 4793, 4866, 5467, 5527, 5672, and 5819, we are not empowered to grant more than that afforded in the controlling agreement. Rule 35 of the agreement between the parties provides that an improperly disciplined employee shall be "compensated for wage loss, if any, suffered by him ... less any amount earned during such period the disciplinary action was in effect". No interest on the lost earnings ordered to be paid claimant may be granted.

A W A R D

Claim sustained to the extent set forth in the findings.

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.