

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6620  
Docket No. 6511  
2-BN-EW-'74

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

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

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Electrician Helper J. T. Pittman was unjustly dealt with when on date of February 9, 1972, the Carrier assessed a five (5) day disciplinary suspension from the service of the Carrier.
2. That, accordingly, the Carrier be ordered to make the Claimant whole, compensate him for all lost time as a result of the unjust suspension, and the record of the suspension be removed from his 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 waived right of appearance at hearing thereon.

Claimant was charged with being absent from his assigned duties at 11:00 A.M. on Monday, December 20, 1971. After investigation, he was suspended for five (5) days without pay.

Claimant was assigned to work in the Diesel Shop. The District Master Mechanic in charge of the Mechanical Department, including the Diesel Shop, testified that at about 10:30 A.M., on Monday, December 20, 1971, he walked past the Pipe Fitter Shop and "noticed four people in this shop". He returned at 11:00 A.M. and "there were still four people in this shop". At that time he went into the shop and found two pipefitters who belonged there, this Claimant and a Mr. Stewart. The latter two were ordered to return to their respective jobs which they did. At no time did the District Master Mechanic identify the men he saw at 10:30 A.M. He gave no evidence identifying this Claimant and Stewart as two of the four men he saw at 10:30 A.M.

Claimant testified that he was in the Pipe Shop to get a tool, that it was a common practice for employees in the Diesel Shop to borrow tools necessary for his work and that he never understood that he required permission from his immediate supervisor to go to the Pipe Shop to get a tool. He also testified that he was not in the Pipe Shop at 10:30 A.M. and that he was working on his job assignment at the time. Never before had he gotten permission to go to Pipe Shop for a tool. It was taken for granted that he could do so.

Carrier has not met the burden of proof. It has not been established by substantial evidence that the Claimant was absent from his job assignment from 10:30 A.M. to 11:00 A.M., or any other unreasonable time, on December 20, 1971. He was in the Pipe Shop for a purpose. He was on duty. He violated no rule.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of January, 1974.