

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

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

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. John T. Lewis, former laborer, Denver, Colorado, was unjustly dealt with and dismissed from service of the Burlington Northern, Inc. effective October 11, 1976.
2. That, accordingly, the Burlington Northern, Inc. be ordered to reinstate Mr. John T. Lewis to service; with payment for time lost at the pro rata rate, including all fringe benefits and reference to this incident stricken from his 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 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.

Claimant was discharged for violation of Carrier's Safety Rules 54 and 661 on the grounds that he was in possession of a firearm while on duty and that he threatened a fellow employee by pointing the gun at her head.

Safety Rule 54 prohibits the possession while on duty of loaded or unloaded firearms. Rule 661 states that employees will not be retained in service who are careless of the safety of themselves or others.

Claimant stated at the hearing that he had intended to leave his gun at home, but then he explained that he showed it to the employees present at the lunch place with the intention of selling it. He also stated that the gun had no cylinder. He denied pointing the gun at the head of the fellow employee involved.

Claimant first denied ownership of a firearm when questioned by Carrier's Special Agent, but then admitted ownership after it had been recovered by the Special Agent from a crate located at some distance from the scene of the incident. He also admitted that carrying the pistol was not normal practice and that he had no authority to carry it.

Petitioner contends that the absence of the cylinder made his gun an "antique" rather than a "firearm" as used in Rule 54. This contention is effectively refuted by Carrier's citation from the United States Code Annotated defining "firearms" and "antique firearm". Moreover, Rule 54 makes no distinction between loaded and unloaded guns.

Three employees attested to Claimant's possession of the firearm and aiming it at the head of one of them. This testimony was not rebutted in the record. Claimant's assertion that he knew that the pistol would not fire does not excuse his action.

Claimant's explanation that he had originally intended to leave the gun at home, but that when he discovered he had it on his person he showed it to his fellow employees in order to sell it is unconvincing, especially since, as he maintains, it had no cylinder.

We find, accordingly, that the charge against Claimant is fully supported by the evidence and will, therefore, deny the claim.

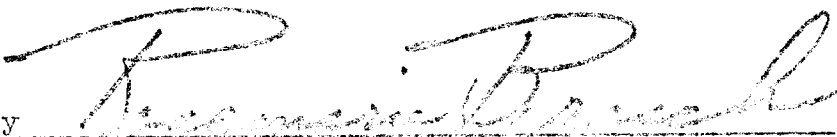
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of January, 1979.