

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8622
Docket No. 8406
2-BNI-EW-'81

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

Parties to Dispute: { International Brotherhood of Electrical Workers
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Burlington Northern Inc. failed to hold investigation on train riding Electrician Gary L. Carson within specified time limits after Electrician Carson was withheld from service.
2. That in violation of the current Agreement, Burlington Northern Inc. failed to respond to the claim(s) of untimely investigation and other violations made by the General Chairman and the Assistant General Chairman to Division Superintendent R. L. Beem.
3. That in violation of the current Agreement, the investigation afforded Electrician Gary L. Carson by Burlington Northern Inc. was neither fair nor impartial.
4. That in violation of the current Agreement, the action of Burlington Northern Inc. when it ~~severed~~ Electrician Gary L. Carson from service on date of August 4, 1978 was arbitrary, capricious and unjust.
5. That accordingly, Burlington Northern Inc. be ordered to restore Electrician Gary L. Carson to service, to compensate him for all time lost, remove the record of investigation and/or discipline from his personal record together with restoration of any lost seniority, vacation time, holidays, sick days, hospitalization, Railroad Retirement benefits or any other insurance benefits and any other rights, privileges or benefits to which he may be entitled under schedules, Agreements, rules or laws. Starting date on the claim was August 4, 1978, and the claim will continue until such time as Electrician Carson is properly returned to service.

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, Gary L. Carson, was a train-riding electrician on carrier's passenger train running between Chicago and San Francisco. He worked a territory between McCook, Nebraska, and Denver, Colorado. There had been thefts from passenger baggage checked on this train. By the process of deduction, carrier suspected that the pilferage was taking place somewhere in the vicinity of Denver. It thereupon planted three pieces of baggage seeded with powder. The powder would adhere to anyone who touched it and would only be visible by exposure to a special light. Carrier also bugged two of the bags with alarm devices.

These items were planted on the train that was worked by claimant out of McCook, Nebraska. Claimant was in the baggage car when the alarms went off. He was eventually accosted by Amtrak investigators and accused of pilfering the passengers' baggage. He was denied the opportunity to work the train by Amtrak supervision and was told to exercise his seniority on June 7, 1978.

Claimant, on June 16, 1978, was notified that he should appear for a hearing into the matter to ascertain his responsibility in connection with the rifling of the luggage in the baggage car while he was assigned as an electrician on Amtrak #15, on June 6, 1978. That hearing was held in Denver, Colorado, on July 6 and 7, 1978. At the conclusion of that hearing, carrier found claimant guilty as charged and discharged him, effective August 4, 1978.

The organization argued that carrier violated Rules 35 and 20 of the controlling agreement in its handling of the instant case on the property. It also alleged that claimant was innocent of all charges and should return to work with all benefits.

Carrier argued that no procedural violation existed in its handling of this case and that by a preponderance of the evidence presented, claimant was found guilty and properly discharged.

This board has been given a very voluminous and complete record in this case. After an extensive review of it, the board is of the opinion that claimant was extended all substantive and procedural rights required by contract. We do not find that carrier has violated the contract in its handling of this case on the property. It is also the opinion of this board that the record of this case supports carrier's conclusion and its dismissal of claimant.

Claimant was literally caught in the act of opening travelers' luggage by Amtrak investigators. Despite the organization's defense, it was impossible to explain away the fact that the two planted bags with bugs in them had been tampered with. The alarms went off and the zippers on the bags clearly indicated that they had been opened. The most damaging evidence against claimant was the fact that his hands contained the special powder. This fact could not be explained. There is no question that claimant had to touch the goods inside the bag in order to have as much power on his hands as the record indicates. The carrier has carried its burden of proof in this instance and discharge is not inappropriate under these circumstances. We see no evidence in this record that would indicate that carrier in any way conspired against claimant.

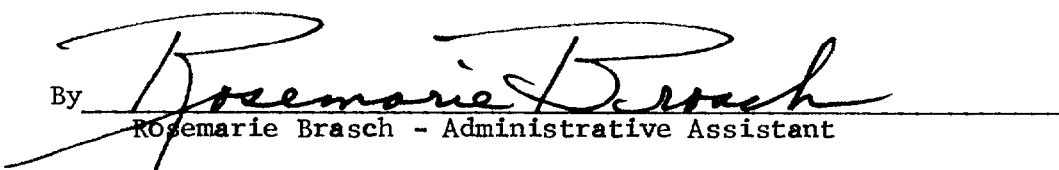
A W A R D

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 18th day of February, 1981.