

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Rule 35 of the current Agreement, and unjustly dismissed Carman D. R. Vetter, Havelock Shop, Lincoln, Nebraska, from service for alleged injury suffered on duty November 14, 1978.
2. That accordingly, the Burlington Northern, Inc. be required to reinstate Carman D. R. Vetter to service with seniority rights, vacation rights, pass rights and job protection benefits unimpaired, that Claimant be made whole for all health and welfare and life insurance benefits, made whole for pension benefits including railroad retirement and unemployment insurance, compensated eight (8) hours per day for each workday commencing January 12, 1979 and continuing until returned to service, and made whole for any other benefits that he would have earned during the time he was dismissed from 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 was employed as a carman in Carrier's Havelock Shop Truck Shop, Lincoln, Nebraska, with assigned hours 7:00 A.M. to 3:00 P.M.

On November 14, 1978, claimant was assigned to dismantle a scrap truck at the shop. According to the Carrier, claimant's foreman instructed claimant on the proper method of dismantling scrap trucks without using a forklift, as no forklift was available at the time, telling him specifically to cut the inside spring out with a cutting torch. In attempting to dismantle the truck, claimant failed to cut the springs out with a cutting torch, but attempted to pry them out with a bar without cutting them. In his effort to pry the springs out, claimant injured his back.

On December 12, 1978, claimant was notified:

"Attend investigation in Main Office Meeting Room, Havelock, Nebraska at 8:00 AM, December 19, 1978, for the purpose of ascertaining the facts and determining your responsibility in connection with your failure to properly perform your work at approximately 10:30 AM on November 14, 1978, which failure resulted in your allegedly suffering an injury.

Arrange for representative and/or witnesses, if desired, in accordance with governing schedule rules.

Please acknowledge receipt of this letter by affixing your signature on copy of same in space provided, returning letter to his office.

E. J. Spomer
Shop Superintendent

cc: R. K. Shafer, Jr."

The investigation was postponed and conducted on December 22, 1978. A copy of the transcript of the investigation has been made a part of the record. Following the investigation, claimant was notified on January 12, 1979, of his dismissal from service.

In the investigation the foreman testified that he instructed the claimant as to the exact method to use in removing the truck spring. Claimant testified that he did not cut the spring with a torch before attempting to pry it out.

Based upon the evidence in the investigation, the Carrier determined that claimant's injury was directly attributable to his ignoring his foreman's instructions. We have carefully reviewed the transcript and find substantial evidence to support Carrier's conclusion. It was also proper for the Carrier to take into consideration claimant's prior work record in determining the discipline to be imposed. Claimant had been in service about two and one-half years, during which time he had nine on-duty injuries. In the handling on the property, the Carrier made reference to the nine injuries, and stated claimant had received formal discipline on two prior occasions.

We find that the investigation was conducted in a fair and impartial manner. The fairness of an investigation is determined by the manner in which it is conducted and not by who conducts it.

Based upon the entire record, there is no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

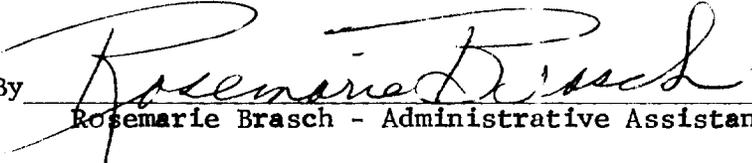
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Award No. 8926
Docket No. 8782
2-BN-CM-'82

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 24th day of February, 1982.