

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician R. E. Shaw of West Burlington, Iowa was unjustly suspended from service of the Burlington Northern Inc., following investigation held on date of June 12, 1980.
2. That the notice of discipline dated July 8, 1980 was incorrect in its stated assessment of discipline and therefore procedurally defective.
3. That accordingly the Carrier be ordered to make the aforementioned Mr. R. E. Shaw whole by compensating him for all wages lost while unjustly withheld from service, in addition to unimpaired restoration of all rights and benefits due him under prevailing schedule rules. Claim to begin at 3:31 p.m., on July 8, 1980 and to continue through 6:59 a.m., August 20, 1980, and will include removal of all record of this investigation from Mr. R. E. Shaw's 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 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, Mr. R. E. Shaw, received notice on June 4, 1980 to attend an investigative hearing on June 12, 1980 to ascertain the facts and his responsibility in connection with his "alleged quarrelsome conversation with (his) immediate supervisor and (his) vicious and unsafe removal of an object from (his) work bench at approximately 7:10 A.M. on June 4, 1980". On July 8, 1980 Claimant was advised by the Carrier that he had been found guilty as charged and was being assessed a suspension of thirty (30) working days. After appeals for adjustment of this discipline were made on property by the Organization in a timely and orderly manner up to and including the highest designated officer of the Carrier, this case is now before the National Railroad Adjustment Board.

An analysis of the record before this Board leads it to conclude that the investigation was held in a fair and impartial manner and that there is no procedural error in Carrier notice of discipline since the suspension, as indicated in notice to Claimant, and as verified by appeal letter of Organization Vice General Chairman on October 17, 1980, was clearly a suspension levied for thirty (30) working days. Further analysis of the transcript of the hearing shows that sufficient substantial evidence is present to warrant that Claimant is guilty as charged. And substantial evidence is here defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Board 305 U.S. 197,229). The hearing transcript establishes that Claimant was quarrelsome, that he used profane language, and that he threw a controller from his work bench in anger in a manner which can be construed to have been unsafe. Further, Claimant himself freely admits in the hearing that he violated Carrier Safety Rules 661, 664 and C. These Rules read, in pertinent part:

Rule 661:

"Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

Rule 664:

"Courteous, orderly conduct is required of all employees. Boisterous, profane, or vulgar language is forbidden."

Rule C:

"Burlington Northern service demands the faithful intelligent, courteous, and safe discharge of duty."

If, in fact, Claimant had a disagreement with his supervisor over procedures for calling in to lay off, he should have obeyed his superior and filed a grievance rather than create the sequence of events which led to this case being before the National Railroad Adjustment Board. From the record before it, therefore, the Board cannot conclude that Carrier's action was unreasonable, arbitrary, capricious nor discriminatory when it assessed the discipline against Claimant. It will not, therefore, disturb Carrier determination in this matter.

A W A R D

Claim denied.

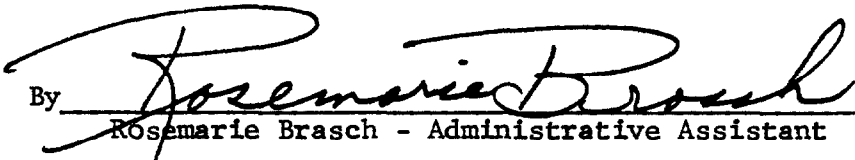
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Award No. 9411
Docket No. 9350
2-BN-EW-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of March, 1983.