

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. R. J. Mines, Laborer, Vancouver, Washington, was unjustly dealt with when dismissed from service of the Burlington Northern, Inc., effective November 21, 1979.
2. That, accordingly, the Burlington Northern, Inc. be ordered to reinstate Mr. R. J. Mines to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all time lost plus 6% annual interest, with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service, and the mark removed 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 R. J. Mines, a Laborer, was served with notice of investigation to determine responsibility for an alleged insubordination and altercation with a supervisor on October 21, 1979. The investigation was held on October 26, 1979 and Claimant subsequently was dismissed from service effective November 21, 1979.

The ~~record~~ before this Board contains conflicting testimony as to the occurrence between Claimant and the Supervisor, with the Carrier's witnesses relating how the Claimant pushed the Supervisor aside to leave the room where the Supervisor had charged Claimant with taking his notebook, and the Claimant and his witnesses stating that it was the Supervisor who had shoved the Claimant.

Referee Larney noted in Second Division Award No. 7973 that "As an appellate body, this Board is without jurisdiction to resolve conflicts in hearing testimony or to determine credibility of witnesses." In an informed exposition Referee Dana Eischen (Second Division Award No. 8280) observed:

"The descriptions of the event are so dramatically opposed that it must be concluded that one or the other of these two sole witnesses is not telling the truth. Carrier's hearing officer, who assessed the discipline, obviously chose to believe the foreman's version. From the transcript of the investigation we cannot say that this conclusion was unsupported by the evidence or patently unreasonable. While we may have resolved the credibility conflict differently if we had the opportunity to observe demeanor and other factors relating to testimonial capacity, we do not have that opportunity under existing appellate procedures in this industry. Rather a long tradition of arbitral restraint in such cases has been firmly established by hundreds of awards by this and other grievance arbitration Boards operating under the Railway Labor Act. This approach is not of our making but it is so universally accepted and utilized by both parties that we cannot lightly cast it aside; notwithstanding its obvious limitations upon the pursuit of facts in a particular case."

A review of the entire record before this Board establishes that there was substantial evidence to sustain the Carrier's decision to discipline Claimant, i.e., the testimony of the Supervisor involved, the testimony of another supervisor who was in the office and who testified that he saw Claimant push the Supervisor out of the way and the Claimant's statement that in grabbing hold of the handle of the office door "I guess I threw him off balance and that was that." Given the seriousness of the infraction and the Claimant's prior record, the Carrier's determination to dismiss Claimant was reasonable.

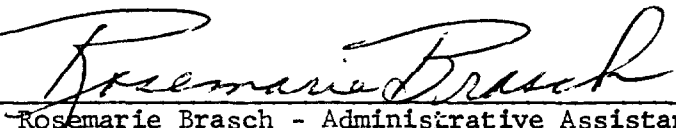
A W A R D

Claim denied.

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 15th day of June, 1983.