

The Second Division consisted of the regular members and in addition Referee Jonathan Klein 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 Railroad Company unjustly suspended Carman M. Ayers, St. Louis, Missouri, from service on December 23, 1981 and subsequently dismissed him following an investigation conducted on December 30, 1981, in violation of the controlling agreement.

2. That the Burlington Northern Railroad Company failed to provide a proper notice of investigation, depriving Mr. Ayers of a fair and impartial investigation.

3. That Carman M. Ayers be restored to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired.

4. That Carman M. Ayers be compensated for all time lost, plus six percent (6%) annual interest.

5. That Carman M. Ayers be reimbursed for all losses sustained that are a provision of the agreement between the Burlington Northern Railroad Company and the Brotherhood Railway Carmen of the United States and Canada.

6. That Carman M. Ayers' record be cleared of the charges.

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 employes 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, Martin Ayers, was employed at Carrier's Repair Track facility in Lindenwood Yard, St. Louis, Missouri. Claimant was suspended from Carrier's service pending investigation into the total fire destruction of one of Carrier's trucks. Subsequent to the suspension, an investigatory hearing was held at which Claimant, his representative, and a second Carrier employee, J. Winters, appeared.

Claimant's case has been thoroughly reviewed by this Board. The witnesses, issues, facts and incidents in the present appeal are identical to that in Mr. Winters' case, Award 10047, save and except that Claimant was using the cutting torch at the time the vehicle was destroyed. This Board has denied the claim of Mr. Winters.

In this Board's opinion in the companion case, Award 10047, we set forth facts and rationale for denial of the claim. A close review of the record indicates that Claimant's culpability is equal to that of Mr. Winters. A repetition of that opinion here would serve no useful purpose, and its rationale is equally applicable to this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 22nd day of August 1984.