

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10261
Docket No. 10267
2-BN-EW-'85

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

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Burlington Northern Railway Co.

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician J. Harris was prematurely disciplined when he was improperly withheld from service prior to the holding of a fair and impartial investigation.
2. That the investigation held on April 21, 1982 was not a fair and impartial investigation and in addition the Burlington Northern Railroad failed to prove the alleged Rule violations.
3. That the assessed discipline was excessive in relation to the charges and the circumstances present.
4. That accordingly, the Burlington Northern Railroad be ordered to make the aforementioned J. Harris whole by restoring him to its service with seniority rights unimpaired and compensate him for all wages lost plus 16% annual interest. Claim also includes reimbursement for any losses sustained by the Claimant as the result of lost coverage under health, welfare and life insurance agreements resulting from his unjust dismissal from service.

Claim to begin April 1, 1982 and continue until J. Harris is made whole and 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 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.

In April 1982 the Claimant was employed as an Electrician at the Carrier's facility located at Memphis, Tennessee.

As a result of an investigation that was held on April 21, 1982, the Claimant was dismissed from service for violating Rules 565 and 566 on April 1, 1982. These Rules provide in relevant part:

"Rule 565: 'The use of alcoholic beverages *** by employees subject to duty *** is prohibited.

Rule 566: 'Employees must not report for duty under the influence of any alcoholic beverage ***.'"

Both Trainmaster S. F. West and General Foreman D. W. Williams testified that they could detect a strong odor of alcohol on the Claimant's breath soon after the beginning of his shift, when he received his work assignment. The Claimant acknowledged that he "had a few drinks five hours" before he "came to work". It was the Claimant's 51st birthday and he had been celebrating with friends.

It is fairly well established in the railroad industry that reporting to work under the influence of alcohol is subject to severe discipline, including discharge. However, it should be pointed out that Rule 566 does not mandate dismissal from service. It should also be underscored that it is not for the Board to substitute its judgment except under limited and extenuating circumstances. Such circumstances are present in this case.


In light of his nine (9) years of service with the Carrier, the Grievant's conduct on April 1, 1982 was an isolated episode. The Claimant's conduct cannot be condoned, and if repeated, it would merit dismissal from service. However, based on the record in this case, the Board deems the penalty of dismissal to be excessive. As a result, the Claimant shall be reinstated to service, with seniority unimpaired but without compensation for time lost.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 13th day of February 1985.