

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

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

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Communications Electronic Technician D. M. Smith was unjustly withheld and later dismissed from the service of the Burlington Northern Railroad as the result of an investigation held May 15, 1985.

2. That the investigation held on May 15, 1985 was not a fair and impartial investigation in that Electronic Technician Smith did not receive required advance written notice of the full and specific charges for which the investigation was being held and for which he was later disciplined.

3. That Electronic Technician Smith was further denied the required fair and impartial investigation when the same Carrier Officer preferred the charges, conducted the investigation, dispensed the discipline and demonstrated clear prejudicial conduct in allowing hearsay testimony while at the same time denying Mr. Smith the right to cross-examine or confront those whose testimony was presented against him.

4. That accordingly, the Burlington Northern Railroad be directed to reinstate Electronic Technician D. M. Smith to its service with undisturbed full seniority rights, compensate him for all wages lost while withheld or dismissed from service, compensate him for or restore all rights he is entitled to under the Agreement which were lost or adversely affected by his dismissal, and that all record of the subject investigation be removed from his personal record. Claim begins May 7, 1985, and continues until Technician Smith is restored to service and made whole.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

at 8 a.m., Monday, May 6, 1985, and at 8 a.m., Tuesday, May 7, 1985, and for the purpose of investigating your alleged violation of General Rule 566 at the BN Technical Training Center, Kansas City, Missouri, about 10 a.m., Tuesday, May 7, 1985. Arrange for representative and/or witnesses if desired, in accordance with governing provisions of prevailing schedule rules.

This is to advise that you are being withheld from service pending results of the investigation.

Please acknowledge receipt by affixing your signature in the space provided on copy of this letter and return to this office promptly."

The Notice was over the signature of Carrier's Superintendent of Communications.

General Rule 566, cited in the Notice, reads:

"Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication, including those prescribed by a doctor that may in any way adversely affect their alertness, coordination, reaction, response or safety."

A copy of the Transcript of the Investigation conducted on May 15, 1985, has been made a part of the record. We have reviewed the Transcript and find that the Investigation was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated. It was not improper to accept medical reports into the record of the Investigation without the writer thereof being present. Claimant was notified of his dismissal from service on May 28, 1985. We find that substantial evidence was adduced at the Investigation in support of the charges against Claimant. Claimant was clearly guilty of conduct that cannot be condoned. Usually a blood alcohol test of 0.10% is considered intoxicated under laws pertaining to the operation of motor vehicles. It is also evident that Claimant tampered with the urine samples given for the urinalysis. There is no proper basis for the Board to interfere with the discipline imposed.