

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11183
Docket No. 11237
2-BN-EW-'87

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, Electrician D. G. Hetrick was unjustly suspended from the service of the Burlington Northern Railroad for a period of five (5) days effective June 7, 1985, at 12:01 A.M., thru 11:59 P.M., June 11, 1985, following an unfair investigation held May 20, 1985.

2. That the notice of investigation provided the Employees under date of May 13, 1985 did not contain the required notification of the precise charge for which the investigation was held and for which discipline was assessed.

3. That accordingly, the Burlington Northern Railroad be directed to compensate Electrician Hetrick for all wages lost as the result of the unjust suspension. Claim also includes correction of any seniority impairment, lost vacation time, holidays, sick pay, or hospitalization benefits to which may have been lost or adversely affected by his unjust suspension. Finally, claim is for removal of all record of the investigation from Electrician Hetrick'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 employee or employees 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.

The dispute herein involves a five-day suspension assessed Claimant following a formal Investigation conducted on May 20, 1985, on the charge:

"Attend investigation in the Shop Superintendent's Conference Room at Livingston, Montana at 1:00 p.m. May 20, 1985, for the purpose of ascertaining the facts and determining your alleged responsibility in connection with your alleged altercation at approximately 7:30 a.m. on May 1, 1985 at the Electric Shop.

.....
....."

The Carrier states that the other employee involved in the alleged altercation (a Machinist) was also cited for formal Investigation on the same charge.

The Investigation involving the Claimant was conducted as scheduled, and a copy of the Transcript has been made a part of the record. Upon review we find that the Investigation was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated. The charge against the Claimant was sufficiently precise to enable him and his representative to prepare a defense.

Rule 563 of Carrier's Safety Rules and General Rules was read into the Investigation and cited in the notice of discipline assessed Claimant on June 3, 1985. The Rule will not be repeated here.

It is well settled in discipline cases that the burden of proof rests on the Carrier, and the Carrier is required to produce substantial evidence in support of the charge. The matter of proof in the present case gives us concern. It is clear from the Investigation that the Claimant and a Machinist, while both were on duty, engaged in name calling over the matter of a Shop door being open, the name calling resulting in the two pushing and shoving each other. It is far from clear which employee actually instigated the entire affair, especially the pushing and shoving.

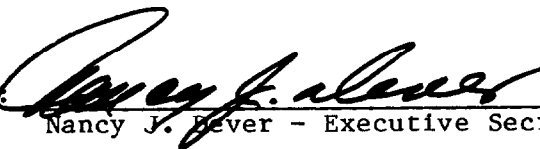
We find that the Carrier did not meet the burden of proof required of it. The Claim will be sustained, with compensation for wage loss computed strictly in accordance with Rule 35(g) of the applicable Agreement. The Rule contains no provision for "hospitalization benefits."

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.