

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Electrician R. W. Woodling was unjustly suspended and dismissed from the service of the Burlington Northern Railroad as the result of an investigation held November 4, 1985.

2. That the investigation held on November 4, 1985 was not a fair and impartial investigation in that the Burlington Northern Railroad had prejudged Electrician Woodling in violation of the concerned Rules prior to the subject investigation .

3. That the Burlington Northern Railroad during the subject investigation failed to meet its required burden of proof in regard to the precise charges for which the investigation was being held.

4. That accordingly, the Burlington Northern Railroad be directed by this Board to make Electrician R. W. Woodling whole by restoring him to its service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits and all other rights, benefits and/or privileges that he is entitled to under the rules of the Agreement, custom or law that were lost or adversely affected by his unjust dismissal. Claim includes compensation for all wages lost by Electrician R. W. Woodling during his suspension and dismissal and for the removal of all record of this investigation and discipline from his 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 employe 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 Claimant, a ten-year employee of the Carrier, worked as an Electrician at the Carrier's Diesel Repair Facility in Alliance, Nebraska. On October 27, 1985, the Claimant had a conversation with his Supervisor regarding Claimant's indictment on a Federal Drug charge. Later that day, the Claimant was requested to submit to a urinalysis test. He declined to be tested, and on October 28, 1985, he was advised that he was being withheld from service of the Carrier for, ". . . insubordination by refusing to submit to a toxicological test and violation of Rules 564, 565, and 566."

A Hearing was held on the charge on November 4, 1985. The Claimant was found guilty and was dismissed, effective November 19, 1985.

The testimony in the record indicates that at no time on October 27, 1985, did the Claimant display on-the-job behavior that indicated he was under the influence of a controlled substance. And, as was maintained by the Claimant, only the word "request" was used regarding his submission to testing. He did acknowledge, however, that he clearly understood that refusal to submit to testing would be considered insubordination -- a violation of Rule 564. As to Rules 565 and 566, he insisted that he had violated neither Rule, but did admit to using marijuana and drinking beer four days prior to the date in question.

This Board acknowledges that care must be taken in the administration of drug tests. However, it makes no judgment as to what procedures management should follow in such testing. In the instant case, given the severity of the federal drug charge, it is not unreasonable for the Carrier to wish to examine the Claimant to determine his fitness to perform his assigned duties. There was no evidence introduced that attested to his job-related drug use. Neither was he tested in a random fashion, but rather as a result of his indictment.

In respect to the issuance of the request to test, the Claimant testified that he clearly understood the meaning of the request, as well as the ramifications of declining to obey. It is a well-established principle that an employee who feels his Supervisor has exceeded his authority in issuing a directive should obey the order and grieve it later. Long term employees such as Claimant are particularly aware of this "rule of the shop." In the instant case, the Claimant admitted that he does use a controlled substance on his days off, and that he was concerned that traces of it would show up in the urinalysis. His refusal to submit to testing appears to have been self-serving, and therefore unrelated to whether the directive was an "order" or a "request".


Based on the testimony presented in the record, the Board denies the Claims that the Carrier failed to conduct a fair and impartial Hearing, and failed in its required burden of proof of the charges. The Claimant's suspension and dismissal from the service of the Carrier is upheld.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1988.