

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

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

STATEMENT OF CLAIM:

1. That in violation of the controlling Agreement, Electrician R. D. Craig of Alliance, Nebraska was unjustly suspended from the service of the Burlington Northern Railroad Company for a period of fifteen (15) days following an Investigation held on January 27, 1987.
2. That the Investigation held on January 27, 1987 was not a fair and impartial investigation.
3. That the Carrier arbitrarily investigated and disciplined Electrician Craig on the basis of charges not contained in its notice to appear.
4. That Electrician Craig was out of service per Rule 16 in the controlling Agreement during the period he was charged with being absent from duty, making said charges moot.
5. That accordingly, the Burlington Northern Railroad Company be directed to make Electrician R. D. Craig whole by compensating him for all wages lost during his fifteen (15) day suspension, February 13 through 27, 1987, restore any vacation time, personal leave, insurance or Railroad Retirement which may have been lost or adversely affected by the suspension and remove all record of the 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 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.

The facts in this matter are not in dispute. The Claimant was scheduled to report for work on January 8, 1987, (following a 90-days disciplinary suspension). The Claimant did not report for work on that day. The

first the Carrier heard from Claimant was on January 17, 1987, when he notified a supervisor that he would report for work on January 18, 1987.

On the day that Claimant was to have initially reported for work (January 8, 1987) he was in California (his work location is in Nebraska). Claimant contends he was having mechanical problems with his vehicle and did not have the vehicle in running order until January 11, 1987. However, the next day January 12, 1987, the vehicle was stolen. Subsequently, Claimant left California by bus on the 14th and arrived in Nebraska on the 17th.

Before dealing with the merits of the case, two procedural issues must be decided. First, the Organization argues that a pre-hearing discussion between the investigating officer and a witness denied Claimant a fair and impartial hearing. Based upon a review of the full record, there is no evidence that Claimant was denied due process, or that the discussion biased the proceeding or its outcome. The pre-hearing discussion was unwise, irregular and potentially damaging to the conduct of a fair hearing. Nevertheless, given the facts of this case, there is no basis to conclude that the discussion tainted the investigating officer's decision. Second, the charge notice is sufficiently specific concerning the matter under investigation. The record indicates that Claimant and the Organization prepared and presented a comprehensive defense.

Turning to the merits of the case, Claimant knew that if he could not report for scheduled work on January 8th, he was required to give proper notice. The Claimant could have but did not give such notice on or before January 8th. The Carrier had no knowledge of his whereabouts or his intention to protect his employment until January 17th. The requirement that Claimant report his absence and obtain permission to be absent is reasonable, and in this case, is not in conflict with Rule 16. Finally, the Carrier's letter of January 14, 1987, to Claimant was a notice to him to protect his employment. That letter in no way serves to relieve Claimant of his responsibility to timely advise the Carrier of his absence and to obtain permission to be absent.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1989.