

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11841
Docket No. 11825
90-2-89-2-130

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

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That the Burlington Northern Railroad (hereinafter referred to as the 'Carrier') violated the controlling agreement, specifically Rule 35, when it improperly and unjustly suspended Machinist E. Spradling (hereinafter referred to as the 'Claimant') 14th Street Shop, Chicago, Illinois from service for a period of ten (10) days.

2. That accordingly the Burlington Northern Railroad compensate Machinist Spradling for all time lost, restore all rights and benefits, and remove the entry of censure from his personal record due to his improper and unjust suspension from 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 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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was an assigned Machinist at the Carrier's 14th Street Shop. On September 7, 1988, Claimant was instructed to weld a nose wear plate on a traction motor. He protested. Carrier then disciplined Claimant for alleged insubordination and failure to comply with instructions.

From the record before us, there is no evidence to refute the Claimant's defense that he did not know how to weld. Further, from the hearing record, it is also unrefuted that other Machinists were used to do needed welding, even at Claimant's location, because he was not qualified to do the welding.


Carrier argues that Claimant is a qualified Machinist and intimates that Claimant has been qualified in welding. That may or may not be true. But there is no evidence in this record to support Carrier's contention of Claimant's qualification. It is a rebuttable presumption that a journeyman is qualified in all aspects of his craft but, when challenged, must be supported with evidence, Second Division Award 10431. And as noted above, there is unrefuted testimony that Claimant did not do any welding in his assignment nor was he qualified.

Because the Carrier has not substantiated that Claimant is qualified in welding, we cannot conclude that Claimant's action here warranted discipline.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1990.