

The Second Division consisted of the regular members and in addition Referee William O. Hearn 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 current agreement the Burlington Northern Railroad Company did suspend Electrician Leon V. Doney from its service on August 31, 1988 without first providing him with the required written notification specifying the reasons for said suspension.

2. That Electrician Leon V. Doney was unjustly disciplined as the result of an unfair investigation held September 9, 1988.

3. That the ultimate discipline of dismissal was totally unjust and unwarranted in relation to the charges which were not supported.

4. That accordingly, the Burlington Northern Railroad Company be ordered to make Electrician Leon V. Doney whole by restoring him to its service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, retirement which may have been lost or adversely affected by his dismissal. That the Burlington Northern Railroad Company be further ordered to compensate Electrician Leon V. Doney for all wages lost by him as the result of this dismissal and that all record of this investigation and discipline be removed from his personal record. Claim filed for eight (8) hours wages at pro-rata rate beginning on date of September 1, 1988 and continuing until adjusted. The Agreement of April 1, 1983 is controlling.

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.

On August 31, 1988, Claimant was working as System Electrician for the Carrier in Seattle, Washington.

On the morning of August 31, 1988, Claimant and another Electrician were assigned to proceed to the Carrier's Shop at the Stacy Street Seattle International Gateway Yards to install wiring and a new panel box for an air conditioner.

Prior to Claimant leaving the Electrical Shop he asked his Supervisor if he had to work with the other Electrician. His Supervisor advised Claimant he would have to for the time being; further while loading the truck, Claimant stated to this Supervisor that he would be responsible if something happened. The Supervisor further testified that between 9:00 and 9:30 A.M. he was in the back swabbing out the restrooms when the telephone rang and the recording machine picked up the call. The call was from the other Electrician stating he was having some problems and figured the Supervisor should know what they were and that it didn't look like much work was going to be done that day. After receiving the telephone call, the Supervisor drove his truck over to the work site to find out what was the problem. The Supervisor stated on his arrival the Claimant was feeding fish tape into a conduit. He asked where the other Electrician was and was told by Claimant that he was in the back room. Claimant asked the Supervisor if the other Electrician called him and was told that he did. The Claimant stated "I told you that you'd be responsible." The Supervisor talked to the other Electrician and then called both individuals on the outside and told both of them that they were being paid and paid well to do a job and he expected them to do the job and not cause any problems. It developed that there was a disagreement between the two as to the procedure they should follow in doing this job.

After the Claimant and the other Electrician were admonished to do their jobs, the other Electrician turned around and walked away. Claimant became argumentative and quarrelsome; accusing the Supervisor of setting him up. Claimant continued to argue with the Supervisor for some twenty (20) minutes; until finally the Supervisor ordered him to pick up his tools and go home. An effort was made to defuse the situation and get control of it. The Claimant continued to argue with the Supervisor until the Supervisor called the Police Special Services Unit of the Carrier to escort Claimant off the property.

The Organization's contention being:

- (1) Dismissing Claimant from service was an arbitrary, capricious, unjust action and an abuse of managerial discretion.
- (2) That the investigation held on September 9, 1988, was not a fair and impartial hearing as required by the terms of the controlling agreement.

As heretofore pointed out, in order to defuse a bad situation Claimant was ordered to pick up his tools and go home. The record reveals that Claimant was paid for August 31, 1988, the date of the instance and also of September 1, 1988. Claimant was sent a certified letter of which he acknowledged receipt on September 2, 1988. Therefore, being that Claimant was paid for August 31, 1988, September 1, 1988 and removed from service on September 2, 1988; Claimant was still in service until the notice was received by him on September 2, 1988.

Based on these facts it is the Board's opinion that Carrier complied with Rule 30(b) of the controlling Agreement. It is also the opinion of the Board that the Investigation was held in a fair and impartial manner, in that the Organization had a right to question all of Carrier's witnesses and to present witnesses of their own.

The record reveals that the Claimant has been disciplined for the same type of infraction several times in the past eighteen (18) months.

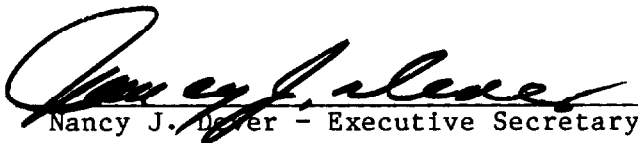
Therefore, based on the facts of record and Claimant's past record, we find the discipline imposed not to be arbitrary, capricious or in bad faith.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1990.