

The Second Division consisted of the regular members and in addition Referee Donald E. Prover 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 governing agreement, Electrician Robert M. Sierra was unjustly suspended from the service of the Burlington Northern Railroad for a period of thirty (30) days following an investigation held on November 29, 1988.

2. That the investigation and the assessment of discipline was not fair and impartial as required by the terms of the governing agreement.

3. That accordingly, the Burlington Northern Railroad should be directed to compensate Electrician Sierra for all wages lost, including available overtime during the thirty (30) day suspension and that this Board should further direct the Burlington Northern Railroad to make Electrician Sierra whole for all other rights, benefits and privileges to which he was entitled and of which he was deprived by the unfair suspension.

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 Electrician assigned to Carrier's Northtown Diesel Shop in Minnesota; assigned hours 11:00 P.M. to 7:00 A.M. During his assigned hours on October 18-19, 1988, the Claimant performed an electrical inspection of the traction motors of BN Locomotive 3139, a GP-50 model. The Claimant "signed off" on the periodic inspection sheet indicating there were no notable defects nor requirements for further maintenance. The locomotive was placed back in service. Special instructions (MNT 124) had been issued with respect to work to be performed in conjunction with the inspection. One of the instructions pertained to the checking and replacement of carbon brushes in traction motors.

On November 3, 1988, the Superintendent while reviewing the "Failed Locomotive Report," noticed that Locomotive 3139 had failed in Chicago on November 1, 1988. Traction motor number 2 had failed due to a short circuit caused by worn brushes and numbers 1, 3, and 4 traction motors were in need of "rebrushing," i.e., the brushes of these motors needed to be exchanged for new brushes.

On November 5, 1988, the Superintendent requested the management at Chicago to collect the brushes from Locomotive 3139 and ship them along with traction motor number 2 to him. Upon arrival of the number 2 motor at Northtown it was rebrushed because it was discovered the brushes were virtually destroyed and were in very bad shape. The motor was completely checked over at this time and no other defects were discovered. The motor was subsequently placed back in service.

Under date of November 12, 1988, the Claimant was notified to attend an investigation; charged as follows:

"Arrange to attend investigation in the Conference Room, Northtown Diesel Shop, Minneapolis, Minnesota, at 7:30 AM on Tuesday, November 22, 1988 for the purpose of ascertaining the facts and determining responsibility for your alleged failure to comply with instructions from proper authority, specifically MMC instruction MNT 124 during electrical maintenance on locomotive BN 3139 at Northtown Diesel Shop on October 18, 1988 with resultant online failure of BN 3139 on Train 01-058-02 into Chicago at approximately 1645 hours on November 2, 1988 with subsequent defective traction motor changeout and repair."

Following the Investigation, under date of December 14, 1988, the Claimant was notified in part as follows:

"the following entry will be made on your personal record:

'Suspended from the service of Burlington Northern Railroad Company for a period of thirty (30) days effective Saturday, December 17, 1988 through Sunday, January 15, 1989, both dates inclusive, for violation of Rule 576 of the Burlington Northern Safety Rule Book, Form 15001, in connection with your failure to comply with instructions from proper authority on October 18, 1988 at Northtown Diesel Shop, Minneapolis, MN.'

Be advised, your personal record was taken into consideration in the assessment of this discipline."

The Employees argue the investigation was not fair and impartial because under similar circumstances other employees had been counseled rather than having to undergo an investigation. We do not agree with the Employees contention in this case. In our opinion a carrier has the prerogative (unless otherwise restricted by Agreement) to either counsel an employee or to hold a formal investigation when it appears there has been a Rule violation. Many factors including an employee's past record, can enter into a decision as to which course to follow. In the instant case the Carrier chose to hold an investigation.

We have reviewed the investigation testimony and find that the investigation was held in a fair and impartial manner.

The Employees argue that the Carrier failed to prove its charges against the Claimant. From our review of the investigation testimony it is our conclusion that sufficient evidence was developed to support a finding of "guilty." The Claimant admitted to having inspected traction motor No. 2 on October 18, 1988.

Carrier witnesses testified to the effect that the only plausible explanation for the failure of traction motor No. 2 was the Claimant's failure to change the carbon brushes (as called for by MNT 124) when he inspected the motor on October 18. The Employees argue that the motor could have failed for other reasons. We believe Carrier witnesses successfully rebutted this argument. The fact that no other defects were noted when the motor was inspected after the incident and worked properly after being rebrushed supports the Carrier's position. While the record is not without its uncertainties, we believe the evidence is of sufficient force to provide a reasonable basis for Carrier's conclusions and they do not appear to be unreasonable or capricious. Accordingly we find the discipline imposed in this case was warranted and not excessive.

The Employees take exception to the Carrier using Claimant's past record when determining the amount of discipline to be assessed because the record was not included in the investigation. We find no merit to this argument. We agree with what was said in Second Division Award 6710, i.e.,

"It is immaterial that Claimant's prior work record was not entered at the investigation hearing. Carrier still has the right to consider that record for the purpose of determining the penalty."

A W A R D

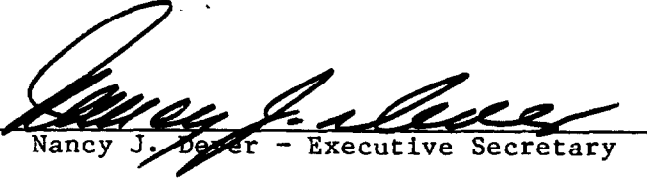
Claim denied.

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Award No. 12080
Docket No. 11901
91-2-90-2-8

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.