

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

1. That in violation of the current agreement, Communication Crew Lineman J. D. Good was unjustly dismissed from the service of the Burlington Northern Railroad following an investigation held on July 29, 1988.

2. That the investigation held on July 29, 1988 was not a fair and impartial investigation under the terms required by the rules of the current agreement.

3. That the supreme penalty of dismissal was clearly unjust, excessive and gross abuse of managerial discretion.

4. That accordingly, the Burlington Northern Railroad should be directed to make J. D. Good whole by restoring him to its service with seniority rights unimpaired, restore all rights benefits and privileges due him under the agreement which were adversely effected by his dismissal and compensate him eight (8) hours pro-rata for each work day beginning August 19, 1988 and continuing until he is restored to service. Claim also includes removal of all reference to the subject disciplinary hearing from Mr. Good's 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 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.

The record indicates that the Claimant was involved in an automobile accident on June 23, 1988. Claimant was driving a company truck when he dented the front fender of another car. On June 28, 1988, the Claimant was notified to attend an Investigation to determine his responsibility, if any, for failing to immediately report the accident, promptly file the proper forms and secure the name, address and license number of the involved vehicle. Following the Investigation held on July 28, 1988, Claimant was notified that he had been found guilty and was dismissed from the service of the Carrier.

The Carrier argued on-the-property that the testimony clearly established that the Claimant violated the Rules. The Carrier maintains that the Claimant received a fair and impartial Investigation substantiating the violations. It further concludes that the discipline was carefully considered and commensurate with the Claimant's past disciplinary record.

The Organization has strongly objected to the Investigation. It contends that the Claimant was prejudged, the Investigating Officer partial and the results did not prove guilt sufficient for any disciplinary action. As such, the Carrier has failed to provide a proper Investigation under Rule 30 and also failed to meet its burden of proof.

In the whole of this record we find that the Claimant was afforded a fair and impartial Investigation. Notwithstanding questions on a urine sample and other issues pursued by the Investigating Officer, the Investigation fully complied with the Rule.

We find that the testimony strongly supports and clearly establishes Claimant's guilt in failure to report the accident. The record indicates that the Claimant made an illegal lane change. Following the accident the evidence establishes that the Claimant did obtain the other driver's name, address and pertinent information. The accident occurred at the conclusion of the Claimant's shift on Thursday. He was due to return to work on the following Monday. On Friday, the Carrier learned of the accident and contacted the Claimant. The Claimant was informed to come in on Monday morning "first thing and fill out the appropriate paperwork."

A full study of the transcript indicates that the Claimant had a minor accident. Upon returning to his tie-up point he did not find his Crew Foreman. The Claimant went to the Communications Supervisors' office to report the accident and found the Supervisors' office was closed. The Foreman returned at around the same time and noticed no damage to the Claimant's vehicle. There is no evidence submitted to suggest that the Claimant had been drinking. There is nothing noted in the police report. There were no injuries known to have occurred until the day of the Investigation.

We are convinced that the facts do establish guilt. Rule 585 clearly states that "all accidents/incidents must be reported to immediate supervisor as soon as possible by first available means of communication." Rule E similarly states that:

"Accidents...must be reported by the first means of communication. Written report must follow promptly when required."

While the Claimant insists that he complied, he failed to telephone anyone. It was the Carrier and not the Claimant that made the telephone inquiry. The Carrier has established proof of Rule violations.

Having found the probative evidence sufficient to support the charges, the only remaining issue is the assessed discipline. The Organization has argued that the Claimant's discipline record was never presented on-the-property. In our review we find no indication that it was attached to any correspondence on property. However, it was clearly utilized by the Carrier and was a matter of discussion on-the-property. We find it relevant and accept it as a part of the full record.

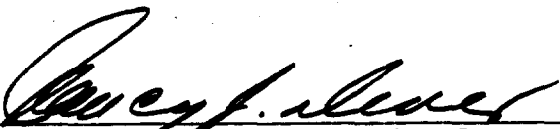
After a lengthy consideration of all elements involved in this dispute, we find the Carrier's dismissal was not warranted in the instant case. We have reached this decision after a review of the Claimant's past discipline (including Second Division Award 11878) and the circumstances surrounding the incident at bar. Although the violation was proven, the discipline was unduly harsh under the instant circumstances. The assessed discipline shall be reduced to a sixty (60) day suspension and the Claimant compensated for lost time beyond such period less outside earnings. Claimant is to be restored to service with seniority and all other rights unimpaired.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 25th day of September 1991.