

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin 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 governing agreement, Mechanical Department Electrician Paul D. Miller was unjustly suspended from the service of the Burlington Northern Railroad Company for a period of fifteen (15) and thirty (30) days following investigations held on May 2 and June 1, 1989, respectively.

2. That the investigations held on May 2 and June 1, 1989 were not fair and impartial investigations as required by the governing agreement, and that the discipline assessed was excessive and unjust.

3. That Electrician Paul D. Miller was denied just compensation for attending the subject investigations on his rest day, in one case, and outside of his regular assigned hours of service, in the other.

4. That accordingly, the Burlington Northern Railroad Company should be directed to compensate Electrician Paul D. Miller for all wages lost and to make him whole for all rights, benefits and privileges of which he was deprived, and the entry of investigation and discipline should be removed 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 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 were given due notice of hearing thereon.

The Claimant in service with the Carrier for a period of 16 years was given 15 and 30 day actual suspensions as a result of Investigations held on May 2, and June 1, 1989 as a result of the Claimant's failure to work after April 7, 1989.

The Organization stated the Claimant asked for a new leave of absence which was denied without reason by the Carrier. The notice for the Hearing involved the same problem. There were no specifics given for the Carrier's refusal. There were a number of Electricians available to the Carrier to protect the Claimant's assignment, and the Organization noted the Carrier used the past record of the Claimant in the Investigation, and this constitutes double jeopardy. Again, the Hearing Officer was too involved with this process to conduct a fair and impartial Hearing. This is not an arrogant employee. The burden of proof is on the Carrier and the Claimant was just following the policy.

The Carrier stated the Claimant was not given permission to be off, and his suspension was as a result of excessive absenteeism in that, for the period of November 16, 1988 through May 30, 1989, the Claimant worked a total of 7 days. Both the Claimant and his Representative stated they were ready to proceed with the Hearing and, again, Rule 35(g) provides the only remedy to the Claim.


Upon complete review of the evidence, the Board finds that the Carrier conducted an Investigation which meets minimum requirements as stated in the controlling Agreement. The Organization and the Claimant were well aware as to why the Hearing was to be held and for which absences this Investigation was conducted. The Carrier had the right to deny the leave of absence request, and the Claimant had the right then to grieve that denial and, yet, chose not to do so. The Claimant also chose to be absent on a substantial number of occasions during the period. It has been held in a number of cases before this and other Divisions of this Board that absences, even for the best of reasons, may reach the point where they become excessive. The Carrier has the right to expect regular attendance on the part of its employees. If the Claimant felt that others should have been recalled in his place, then the grievance procedure is open to him and well known by him due to his long service with the Carrier. Therefore, the Board will find that the Carrier has proven the substantial elements of its case and the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Oliver - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1992.