

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
(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 service of the Burlington Northern Railroad Company for a period of five (5) days following investigation held on March 23, 1989.

2. That the investigation held on March 23, 1989 was not a fair and impartial investigation as required by the current agreement, and that the discipline assessed was unjust and unwarranted.

3. That accordingly, the Burlington Northern Railroad should be directed to compensate Electrician Paul D. Miller for all lost wages and restore all rights, benefits and privileges of which he has been deprived in addition to removing the entry of investigation and discipline 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 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 were given due notice of hearing thereon.

The Claimant, an electrician in service for a period of 16 years with the Carrier, was recalled to his assignment on November 1, 1988. During the time that followed this recall, the Claimant was absent on a substantial number of occasions and was suspended from service for a period of five days following an Investigation which was held on March 23, 1989.

It is the Organization's position that this Claimant is a good employee with over 16 years of service. The Organization noted he received an outstanding service award. The Claimant was recalled to service at a shaky time for the Carrier and the Claimant. The Claimant had a number of personal problems during this time. The Claimant wrote a letter to the Railroad's Superintendent requesting a leave of absence which was denied. If the Carrier was unable to grant the one year leave of absence request, why not a lesser amount? This, in the Organization's opinion, is a violation of the Agreement. The Organization also stated that, when the Hearing was scheduled, the Rules were not cited in the notice and the dates of absence were also not cited; therefore, this is not a precise charge as called for in the controlling Agreement. The Carrier did not hold a fair Investigation since the Carrier prejudged the events. Everyone involved worked for the Hearing Officer. On a number of occasions the Hearing Officer overstepped his bounds. Letters were written under other signatures but on the Superintendent's letterhead. The Hearing Officer was too involved in this case to conduct a fair Investigation.

Regarding the merits of the case, Organization contends that the Carrier violated Rule 16 by its arbitrary refusal to grant the Claimant's request. There was an ample number of employees on furlough to take the Claimant's place. The Carrier could have helped a loyal employee through a time of trouble. Instead the Carrier decided to discipline the Claimant. The Claimant did comply with the call-in Rules and was granted authorized absence. If the Carrier had granted a leave of absence, this could have been avoided. There were others on the recall list. The Claimant did not want to cause disruption to the Carrier but had to help his father in the family business, and he just wanted to help his family. The Claimant father's had a quadruple bypass and Claimant just wanted to do the right thing. The Claimant does want to continue his employment with the Railroad and asked that his claim be sustained.

The Carrier stated that the Claimant was assessed a five day suspension due to his continuing failure to protect his assignment. The Claimant had been recalled on November 1, 1988 and prior to the Hearing had only worked five days. The Claimant stated his reasons for absences were personal. The Claimant and his representative understood the nature of the Hearing and stated in the transcript they were ready to proceed. There is no requirement that the Company Rules be cited in the Notice. The Claimant's seeking of a one year leave of absence is not provided by Rule 16. The conduct of the Hearing Officer was proper, and the Claimant's assertion that he needed to work only one day per month is neither supported nor documented by the Organization. The Claimant's assertion of merger related violations is unfounded and, even if correct, would not be within the jurisdiction of this Board. Rule 35(g) provides the proper remedy in this case.

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 November 1, 1988 through March 23, 1989. 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 finds 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. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1992.