

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 dismissed from service of the Burlington Northern Railroad Company following investigation held on July 11, 1989.

2. That the investigation held on July 11, 1989 was not fair and impartial as required by the governing Rules.

3. That the supreme penalty of dismissal assessed against Mr. Miller was unwarranted and an abuse of managerial discretion.

4. That accordingly, the Burlington Northern Railroad should be directed to make Paul D. Miller whole by returning him to service with seniority rights unimpaired, and compensate him for all lost wages in addition to restoration of or compensation for all rights, benefits or privileges of which he has been deprived and the entry of 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 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 with the Carrier for a period of 16 years, was dismissed from service as a result of an Investigation held on July 11, 1989. The Claimant had received a five day suspension, a fifteen day suspension and a thirty day suspension for failure to protect his assignment. This fourth Investigation involving the same allegations resulted in the Claimant's dismissal from service.

The Organization again stated that there was an unfair Investigation in this matter in that there were no precise charges. The Organization noted the Superintendent signed the dismissal letter in this case and also served as the Hearing Officer. The Claimant was dismissed under Rule 570 for failure to protect his assignment, yet the Carrier dismissed the evidence presented at the Investigation that the Claimant was refused his leave of absence and was under a doctor's care. Therefore, it was not a fair and impartial Hearing. This matter could have been resolved early on because this is a good employee who deserves more consideration. The Organization noted that the Claimant did miss the work as alleged by the Carrier, but he did comply with the Rules and had good reasons for missing work.

The Transcripts stated the Claimant and his representatives were ready to proceed. The Claimant has consistently refused to fulfill his assignment for the Carrier. The Claimant was offered leniency reinstatement, but he refused, and the Carrier cited a number of Awards in support of its position.

Upon complete review of the evidence, the Board finds that the Investigation in this case was held in accordance with the minimum requirements of the controlling Agreement. The Carrier should consider conducting its Investigations so that the appearance of unfair treatment is not present, however, the facts of the case were generally not in dispute. The Carrier has the right to expect regular attendance of its employees, and excessive absenteeism, even for the best of reasons, may result in disciplinary action. However, the Board notes that the Claimant did not do a very good job of communicating the reasons for his excessive absenteeism in a proper manner. Therefore, the Board finds that the Carrier has proven the essential elements of its case. The Carrier did offer the Claimant a last chance leniency reinstatement which was refused by the Claimant. The Board finds that this is the appropriate remedy for this case. This is an employee who was obviously a good employee and went through an extremely bad period of time for any number of reasons. The Claimant should be aware that his conduct is in no way condoned by this Board, and he has committed very serious offenses. Under the circumstances of this case, the Board will order that the Claimant be offered a last chance reinstatement subject to meeting with the Carrier and indicating that he is ready to protect his assignment as required by the Rules. If the Claimant accepts this offer, he should understand that any future proven violations of Carrier Rules may result in his immediate dismissal. This reinstatement is subject to the Claimant taking and passing a physical exam in accordance with the Rules to demonstrate his fitness for service. All other claims are specifically denied.

A W A R D

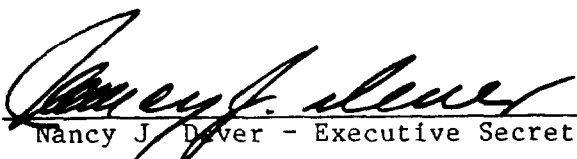
Claim sustained in accordance with the Findings.

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Award No. 12253
Docket No. 12121
92-2-90-2-250

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

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