

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12627
Docket No. 12564
93-2-92-2-87

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Norfolk Southern Railway Company (formerly
(Southern Railway Company)

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railway Company (former Southern Railway Company) violated the controlling agreement when they unjustly suspended Student Electrician B. K. Hixson from service for thirty (30) days after a formal investigation held November 28, 1991 at their Chattanooga Diesel Shop in Chattanooga, Tennessee.
2. That accordingly, the Norfolk Southern Railway Company (former Southern Railway Company), be ordered to compensate Student Electrician A. J. Rice (sic) for all loss incurred and reinstate her with all rights unimpaired, account of the aforesaid unjust dismissal in violation of the agreement."

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 employe 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.

This is the companion case to Second Division Award No. 12626 presently also before this Board. The hearing on the claim was held on November 28, 1990. The charges presented at the hearing were in connection with the following alleged offenses involving Student Electrician, Ms. Beverly Hixson ("Hixson"):

- "1. Ms. Hixson was observed kissing and embracing Mr. Rice at approximately 1:00 A.M. to 3:00 A.M. on November 3, 1990, while on duty and under pay.
2. Claimant failed to follow supervisor H. B. Evans' instructions issued on or about October 12, 1990, not to fraternize with Mr. Rice while on duty and under pay.
3. Student Electrician Hixson, while on duty and under pay, was observed on or about October 5, 1990 in the Fuel Rack Shanty permitting Electrician G. C. Braxelton to rub her leg while both she and Mr. Brazelton were engaged in remarks that had sexual overtones.
4. Ms. Hixson used lewd and obscene language, teasing, joking and making remarks that had sexual overtones among mixed-sex employees.
5. Claimant Hixson touched and pinched male employees."

Before addressing the merits, the Board notes that certain issues have been presented for the first time in the submissions to the Board. Pursuant to the Railway Labor Act, these will not be considered in our deliberation because they were not raised on the property.

With respect to the merits of the claim, the Board has carefully reviewed the transcript of the hearing as well as those arguments properly developed on the property and advanced to this Board. We find that, while the hearing addressed some matters and issues which were not relevant to the charges at issue, given the nature of the alleged incident under review, the Hearing Officer cannot be faulted. We particularly note that both parties made positive efforts to seek out the facts and that the hearing was fair.

Turning to the specific charges and addressing these in the order presented above, we find clear and convincing evidence to support charge one (1). Neither of the principals at the hearing denied the essence of the alleged offense. Moreover, there was testimony from several eye witnesses that also supported the basic thrust of the Carrier's charge. The Claimant's explanation that what occurred took place during a recognized break from work is not reasonably drawn. Her behavior as described is not acceptable in the workplace and is clearly disruptive to the operation of the workplace.

With respect to the second charge that the Claimant failed to follow her Supervisor's instructions, the Supervisor testified that he instructed the Claimant to refrain from hugging, kissing and embracing while on duty. This testimony was not refuted by the Claimant. She actually testified that Evans did instruct her to refrain from intimate contact with Rice. This charge also is sustained.

With respect to charge three, the testimony adduced at the hearing held on November 27, 1990 with respect to Mr. Brazelton has been accepted as a part of the evidence before the Board on this claim. The key evidence shows that two individuals testified to the validity of the Carrier's contentions. Mr. Brazelton also testified that he had rubbed the Claimant's thigh. The Claimant testified that Brazelton rubbed her thigh. Her explanation that she needed medical attention for her shoulder and leg lacks credibility under all the circumstances.

With respect to charge 4 (the alleged use of inappropriate language and behavior that had "sexual overtones"), the evidence shows that the Claimant basically behaved in the manner alleged. The testimony adduced at the hearing shows that similar language, as attributed to the Claimant, was not that uncommon at this particular work site. There is a general principle that even if, arguendo, others have also acted in a similar fashion, the actions of others cannot be an excuse to absolve the person charged from guilt. The Board accepts this general principle and concludes that we have no proper basis to set this charge aside.

With respect to charge five, the testimony at the hearing shows that this charge has been substantiated. It also shows that the Claimant's fellow employees were troubled by this type of behavior and did not want it to occur. Under the circumstances, the Board has no basis to set this charge aside.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 1st day of December 1993.