

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12681
Docket No. 12674
94-2-93-2-89

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

- "1. That in violation of the governing agreement, Shop Electrician E. C. Hofrock of Alliance, Nebraska, was unjustly suspended from service of the Burlington Northern Railroad Company following an investigation held on April 23, 1992.
2. That the investigation held on April 23, 1992, was not a fair and impartial investigation as required by the controlling agreement.
3. That accordingly, the Burlington Northern Railroad Company should be directed to make Electrician E.C. Hofrock whole for all wages lost during a fifteen day suspension from service, in addition to compensation for or restoration of all other benefits, rights and privileges of which he has been deprived including vacation, insurance, etc. The claim also includes removal of all reference to the subject disciplinary hearing from Mr. Hofrock'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 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.

At the time of incident in question, Claimant was employed as a Shop Electrician in Carrier's Mechanical Facility at Alliance, Nebraska. On April 3, 1992, Claimant received a Notice from the Carrier, which read in pertinent part:

"Attend investigation in the Roby Conference Room, Alliance Mechanical Facility, Alliance, Nebraska on Thursday, April 9, 1992, at 1:00 p.m. for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged quarrelsome and disorderly conduct at approximately 1:30 p.m., March 24, 1992, and 1:20 p.m. on March 26, 1992. This incident occurred in the Claims Department at 111 West 1st, Alliance, Nebraska while you were assigned as an Electrician at the Alliance Diesel Shop, Alliance, Nebraska."

The Investigation was ultimately held on April 23, 1992. Following the Investigation, Claimant was notified on May 12, 1992, that an "entry of censure" was being placed on his personnel record and he was suspended from service for fifteen days. The discipline was timely appealed and processed in the usual manner including conference between the parties on December 8, 1992, after which the matter remained in dispute.

At the outset, the Organization maintains that Carrier failed to afford a fair and unbiased Hearing. A careful reading of the transcript fails to confirm the Organization's procedural objection. Examples of examination by the Hearing Officer, which the Organization characterizes as prejudicial, are little more than brief clarification questions following up on lengthy answers by various witnesses.

With respect to the merits of the case, a review of the transcript establishes persuasively that Claimant was at least verbally belligerent to, if not actually physically threatening towards, Carrier's officers. His behavior is particularly inappropriate in the circumstances, since he was seeking payment for a medical claim, and it is apparent that Carrier Claim Agents were attempting to accommodate his request beyond the normal routine of their jobs. Rather than make Claimant wait for his reimbursement, Carrier was willing to advance him the money on the day he appeared, requiring only that he first complete the necessary paperwork and claims interview.

In hopes of excusing Claimant's behavior, the Organization argued that he was provoked into his loud behavior by Carrier employees. However, there is no support on the record for that defense. Testimony by Carrier's witnesses is consistent and

credible, and supports Carrier's position that Claimant's outburst was more in the nature of a temper tantrum than a response to provocation. Claimant's testimony, on the other hand, is contradictory, and a careful reading of that testimony reveals that he initially approached the Claims Department with what can most charitably be described as a "chip on his shoulder."

In light of the evidence on the record, we do not find that Carrier's assessment of a fifteen day suspension was unreasonable. Claimant's behavior was inappropriate in the circumstances and he was properly and fairly disciplined.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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

Dated at Chicago, Illinois, this 6th day of April 1994.