

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12795
Docket No. 12609
94-2-92-2-178

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

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the "Carrier") violated the controlling agreement, specifically Rule 40, when it wrongfully dismissed Machinist F. H. Maness, (hereinafter referred to as "Claimant") from service January 15, 1992, ensuing (sic) an investigation at Argentine, Kansas on January 2, 1992.

2. That, accordingly, the Carrier reinstate the claimant to service with his seniority rights unimpaired with the payment of all time lost and all other rights and privileges restored due to his being wrongfully dismissed from service."

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 employee 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.

This case is a companion case to Second Division Award 12794. The essence of the charge against Claimant is that he misinformed Carrier regarding his shoulder injury. As support for its charges, Carrier presented its commissioned hidden video tape of Claimant driving his motorcycle for a short distance, spraying the garden around his house, and driving his automatic transmission tractor.

At the time of the video taping, Claimant was under a physician's directive not to lift more than twenty-five pounds, nor to raise his arm above his shoulder. The Board has viewed the video tape in question, and finds nothing of substance in it to contradict the Employees' position that Claimant performed only light gardening duty, and complied with his physician's directive in other respects. Moreover, the entire motorcycle trip was of approximately five minutes duration, with Claimant driving slowly (approximately 15-20 mph) up his private road and back to his house.

In sum, the Board finds no evidence on this record to support the charges against Claimant.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1994.