

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12797
Docket No. 12668
94-2-93-2-19

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: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. The Burlington Northern Railroad (hereinafter referred to as the "Carrier") violated the controlling agreement, specifically Rule 35 when it improperly withheld from service Machinist Apprentice M. K. Sims, (hereinafter referred to as the "Claimant") Minneapolis, Minnesota pending an investigation and subsequently unjustly and improperly dismissed Machinist Apprentice Sims from service.
2. Accordingly the Burlington Northern Railroad reinstate Machinist Apprentice Sims to service with his seniority rights unimpaired, with the payment of all time lost and all other rights and privileges restored due to being improperly withheld from service and improperly and unjustly 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 waived right of appearance at hearing thereon.

At the time this dispute arose, Claimant held the position of Apprentice Machinist. By letter of November 19, 1991 Claimant was instructed to attend an investigation into his "alleged quarrelsome, vicious altercation and insubordinate behavior" with an Assistant General Foreman. An investigation was held on December 3, 1991. Following that investigation, Claimant was notified of his dismissal from Carrier's service. Claimant's Local Chairman appealed his discipline by letter of January 8, 1992. That appeal was denied and the claim was subsequently processed in the usual manner including conference on the property, after which it remained unresolved.

The Employees have protested that Carrier failed to grant Claimant a fair and impartial hearing. While the conduct of the investigative hearing was less than ideal, it is clear from the record that Claimant had ample time to cross-examine Carrier witnesses and to present at length his own version of the confrontation at issue. Accordingly, we do not find that the conduct of the hearing constitutes a fatal procedural flaw.

With respect to the merits of the case, the Organization maintains that Carrier has not shown that Claimant actually was guilty of insubordination. Three Carrier witnesses, sequestered during the hearing at the instigation of the hearing officer, testified that Claimant was belligerent and verbally threatening to the Assistant General Foreman of the shift following Claimant's. Claimant's own testimony suggests that he took offense at "a look" the foreman was giving him as he dropped off his time card, and responded in a manner that then precipitated the angry verbal exchange. In light of Claimant's two prior thirty-day suspensions for insubordination within a year and a half of the incident precipitating this case, the Board finds no basis upon which to overturn Carrier's assessment of discipline.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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