

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12850
Docket No. 12748
95-2-93-2-156

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

- "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 Jorge Rovello (hereinafter referred to as "Claimant") from service September 9, 1992, subsequent an investigation at Chicago, Illinois on August 27, 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 waived right of appearance at hearing thereon.

The thrust of the Organization's Claim is that the Carrier has not met the burden of proof in its disciplinary actions against the Claimant, but merely utilized assumption in the place of substantial evidence. The Claimant was injured on August 19, 1992 during an incident with another employee.

The Board has fully reviewed the transcript and finds that the Carrier's case is substantial, related to the Rules and clearly supported by the testimony taken at the formal Investigation. First, the Claimant admits it was a fight and further that the injury sustained was related to the fight. In fact, the Claimant states that he "invited him to go outside." Second, the other employee charged admits to the substance of an angry exchange. This Board's review finds the relevant evidence goes well beyond assumption and firmly satisfies the burden of proof.

The Board has often ruled that this form of conduct can lead to discharge (Second Division Awards 11728, 10450, 10353, 8572, 7347). Such conduct cannot be accepted in this industry where even serious verbal altercations can diminish the safety of the workplace. In considering the Carrier's discipline, the Board has reviewed the Claimant's past disciplinary record. This is not the first time the Claimant has been disciplined for an altercation. After his last altercation he was warned that continued altercations would lead to dismissal. Clearly, that warning was not sufficient to change his behavior. Considering all the facts of this record including the Claimant's admission of guilt, and past disciplinary record, the Carrier's discipline of dismissal will not be disturbed. The Claim is denied.

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 24th day of February 1995.