

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 13043  
Docket No. 13003  
96-2-95-2-25

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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

STATEMENT OF CLAIM:

- "1. That System Electrician James Harris was unjustly withheld and subsequently dismissed from the service of the Burlington Northern Railroad Company, effective December 23rd, 1993, in violation of Rule 30 of the controlling agreement;
2. That the investigation held on December 7th, 1993, was not fair and impartial as required by the rules of the controlling Agreement, and that the discipline assessed was unjust and unwarranted, and;
3. That accordingly, the Burlington Northern Railroad Company be ordered to make System Electrician James Harris whole for all lost wages, rights, benefits and privileges which were denied him, and that he be restored to service with the Burlington Northern Railroad Company immediately, and that the entry of investigation and discipline be removed from his 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 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.

On November 16, 1993, Claimant was notified of an Investigation to be held on November 23, 1993.

"... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged endangering yourself and fellow employee at approximately 1:30 pm on October 20, 1993, when you made contact with 4,160 volt power conductor, without proper safety equipment, after being specifically instructed by your foreman of the extreme danger involved. This incident was brought to the attention of a officer of the Carrier on November 16, 1993...."

The above-cited notice also advised Claimant he was being withheld from service pending the results.of the Investigation.

On November 19, 1993, Claimant was notified of the postponement of the Investigation until December 7, 1993.

Following the December 7, 1993, Investigation, Claimant was notified on December 23, 1993, that he was dismissed from Carrier's service.

Before reviewing the merits, several alleged procedural violations must be ruled upon. The Organization contends that:

- 1) the Investigation was not held within 20 days of the occurrence,
- 2) that it was not held within ten days of being notified that Claimant was being withheld from service,
- 3) that the General Chairman never received a copy of the original notice,
- 4) that the Local Chairman was not furnished a copy of the discipline assessed, and that
- 5) Carrier did not furnish a complete transcript.

and because of these procedural errors, the discipline should be nullified.

Rule 30(i) of the Disciplinary Rule reads as follows:

"(i) If investigation is not held or decision rendered within the time limits herein specified, or as extended by agreed to postponement, the charges against the employee shall be considered as having been dismissed."

Rule 30(i) quoted supra goes solely to the time limits providing when the Investigation must be held and when the decision must be rendered. If Items 1 and/or 2 stated supra were violated, Rule 30(i) would be controlling. The Investigation will be "considered as having been dismissed."

Rule 30(i) does not go to the copies or even to the notification of charges aspect. Suffice to say Claimant had the minimum 5 day advance notice, even if the General Chairman did not. Besides, it is obvious the General Chairman's office was notified as Claimant was represented by a representative from that office, and did appear at the Investigation ready to defend Claimant.

Regarding the copy of the notice of discipline, it did go to the Vice General Chairman who did timely file a nine page claim in Claimant's behalf seeking to overturn the discipline and have Claimant reinstated and paid for all time lost. There is nothing in the record that shows Claimant was in any way prejudiced in the manner Carrier handled the notice of discipline.

Regarding the less than complete transcript, this Board cannot resolve that issue and must dismiss the charge on the basis of irreconcilable differences. A review of the transcript reveals no unfinished question and answer session. When the Organization raised the issue, the Carrier denied it occurred, but it did ask if anything was missing, would the Organization furnish a transcript of the missing pages (the Organization had their own tape of the Investigation). Nothing was furnished by the Organization to support their assertion.

Regarding the contention that Carrier did not serve notice within 20 days of the date of the occurrence as provided in the Rule, it is the opinion of this Board that the notice was timely. The Rule has an exception to the 20 days from date of occurrence clause, and that reads:

"... except that personal conduct cases will be subject to the twenty (20) day limit from the date information is obtained by an officer of the Carrier...."

Testimony at the Investigation clearly established that the Carrier Officer responsible was not informed of Claimant's conduct until November 16, 1993. The Organization's argument that the Foreman who witnessed the incident on the date it occurred is deemed a Carrier Officer, has been denied by the Carrier and that denial is endorsed by this Board.

From that aspect, the notice was timely. It was within 20 days when a Carrier Officer became aware of Claimant's conduct.

Regarding the postponement, the Organization contends it was unilateral and without reason.

Carrier countered stating who in the Organization the Carrier Officer contacted about the postponement and stated that party, after being advised of the needs therefore agreed to the postponement. Although the Organization protested Carrier's position, it furnished no evidence that such a postponement did not occur. A simple statement from the party contacted by the Carrier could have cleared this issue up, but nothing appears in the record but assertions which are not facts. Furthermore, the contention that the postponement notice did not contain a reason therefore somehow nullifies the disciplinary process is also rejected by this Board. The Rule does not quite read as the Organization would like us to believe. Rule 3(a) reads, in part, as follows:

"... The date for holding an investigation may be postponed if mutually agreed to by the Carrier and the employee or his duly authorized representative, or upon reasonable notice for good and sufficient cause shown by either the Carrier or the employee...."

If the postponement is agreed to by either the Claimant or his duly authorized representative, said notice does not have to contain a reason. The notice must contain a good a sufficient reason if the Investigation is postponed other than by mutual agreement.

In summation, Carrier has committed no procedural error in the handling of this dispute that would preclude this Board from examining the merits of this dispute.

Regarding the merits, Claimant's Foreman responded to Claimant's question as follows:

"100. Q. You stated that I touched the knob on the transformer bushing. Is that correct, Mike?"

A. Yes.

101. Q. What is it that you said, you said-- could you go through--you said I touched the knob on the bushing. And we agree on that.

A. Yes, you did.

102. Q. And you actually saw me touch the wire--

A. Yes, I did.

103. Q. --the insulated wire?

A. Yes, I did, You reached up and you touched the wire and you touched the insulator and says 'There's no exposed wires' that 'everything is inside, everything is covered.' And then you had your hand on the insulator and was showing me that there was no exposed danger at all by touching any of this."

Claimant's working companion responded to questions asked by the conducting officer as follows:

"180. Q. Could you tell us what you observed?

A. Well, as we were standing there talking about the job, I did notice that Jim reached down with his right hand, and as if somebody would be checking a hot-water pipe to see if it was hot or not, he didn't just grab and hang on to it, but he grabbed for the wire and he grabbed it like that. And then also his hand reached over and touched the insulator.

181. Q. You made a gesture, if we could clarify that a little bit. Could you explain what you were gesture was when you were describing how he touched the wire?

A. Yeah, he didn't grab it and hold onto it for any length of time, other than as one would hold on to it--if a hot-water pipe, you're checking a hot-water pipe to check and see if it was hot or not, it would hurt you. And he reached down and grabbed the wire and then let off of the wire.

182. Q. Did you observe him touch any other part of the equipment or material in the transformer bank?

A. I did see him touch the insulator. That was on the middle transformer, the right one, right there.

183. Q. Is there room in this transformer bank to avoid coming in contact with any of the conductors?  
A. Yes, there's room.
184. Q. Are you aware of what the voltage is on these wires?  
A. Yes, I do believe it was 4160 phase to phase and 2300 from phase to ground.
185. Q. Do you take exception a journeyman electrician touching a conductor like this?  
A. Yeah, this high a voltage and that close proximity and being taught not to grab live, high-voltage primary without proper equipment, yes, I did. It did scare me. And I did mention something to Mike about it later on.
186. Q. Did you feel that by touching the conductor that it jeopardized your safety in any way?  
A. Yes, I did.
187. Q. And could you describe that?  
A. How do you mean?
188. Q. Asked the question, 'Did you feel that you were in any way jeopardized by Mr. Harris's actions?'  
A. Yeah, being that it was an old installation and being that I knew personally that you shouldn't have never grabbed the wire. And being so close to Jim that there was a chance if one of the connections was loose or the integrity of the insulation was not good, in my opinion, if he'd have got shocked, I was standing next to him, more than likely he would have knocked into me; plus having the metal building right behind us didn't help at all either. And so, it did freak me. It did scare me."

Clearly, two veteran qualified Electricians became alarmed by Claimant's cavalier attitude and manner in the handling of high voltage equipment. Claimant's attitude and approach to working with high voltage equipment is not conducive to achieving longevity.

Under the circumstances, Carrier did, by substantial evidence, establish Claimant's culpability for the charges assessed. The violation was severe. The results could have been disastrous or even fatal. It is noted Claimant has been dismissed once before for a safety rule violation. He apparently has not learned that compliance with these Rules are mandatory, not only for his own safety, but for the safety of others.

The discipline will not be disturbed.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.