

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13219

Docket No. 13102

98-2-95-2-126

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

(International Brotherhood of Electrical Workers
(System Council No. 9

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That the former B&O Railroad Company, now CSX transportation (Carrier), in violation of Agreement Rule 32, arbitrarily and capriciously removed from service on September 17, 1994 and subsequently dismissed from all services, Electrician L.R. Meredith: and;
2. That carrier compensate Electrician Meredith for all time lost as well as make Electrician Meredith whole for all fringe benefits including but not limited to, vacation rights and credits, insurance coverage, retirement credits, and all other rights and privileges that have been disrupted as a result of this unfair, arbitrary, and capricious action; and,
3. That Carrier expunge all mention of this matter from Electrician Meredith's 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.

Claimant was dismissed from the service of the Carrier on October 24, 1994 as a result of an Investigation held on October 5, 1994. Claimant was withheld from service beginning September 17, 1994, pending the Investigation. Claimant was found by the Carrier to have falsified an injury report on September 17, 1994.

The Organization filed this claim on the basis the Investigation was neither fair nor impartial, the charge was not precise, Carrier failed to prove Claimant's guilt, and the Carrier misused its managerial discretion.

A review of the record dictates that the position of the Organization should be sustained.

On June 28, 1994, Claimant notified his Supervisor that at approximately 2:00 P.M. he sustained an injury to the middle finger of his right hand while closing a locomotive cabinet door. At the time, the Carrier's Foreman did not ask the Claimant to fill out an injury report. The Foreman stated he could not see any obvious signs of an injury.

Over the next couple of months there was discussion between the Claimant and various Carrier supervisors, yet none requested the Claimant fill out an injury report.

On September 15, 1994, Claimant saw his doctor because of the swelling in his finger. An X-ray revealed a healed fracture. On September 17, 1994, Claimant reported this to the Carrier's General Foreman. At that time Claimant was requested to fill out an injury report.

On September 17, 1994, Claimant was charged with falsifying an injury report. To this date the Carrier failed to state how the injury report was falsified.

Claimant had 17 years of seniority at the time of the incident with no apparent previous discipline assessed against him.

The Carrier also erred when it suspended the Claimant pending the Investigation. The Carrier did not offer a valid reason for doing so.

The Board will sustain the claim for reinstatement with seniority unimpaired and with pay for all time lost beginning September 17, 1994. However, that portion of the claim requesting that Claimant be made "whole for all fringe benefits including but not limited to, vacation rights and credits, insurance coverage, retirement credits, and all other rights and privileges," is denied. The Schedule Agreement provides:

" . . . If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for his net wage loss, if any, resulting from said suspension or dismissal."

AWARD

Claim sustained in accordance with the Findings.

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 26th day of February 1998.