

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13269

Docket No. 13119

98-2-96-2-15

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

(National Conference of Firemen and Oilers

(System Council No. 6

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Louisville and

(Nashville Railroad Company)

STATEMENT OF CLAIM:

- “1. That under the current and controlling agreement Firemen and Oiler J. R. Adams, ID# 183017 was unjustly dismissed from service on December 6, 1994 by CSX Plant Manager R. P. Vititoe.
2. That accordingly, Firemen and Oiler J. R. Adams be restored to his position with the CSX Transportation, Inc., be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective December 6, 1994, the payment of 10% interest rate added thereto.”

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 December 5, 1994 Claimant was instructed to attend a formal Investigation on December 14 to answer the charge of being insubordinate and uncivil to the Carrier's Area Manager. As a result of the Investigation Claimant was dismissed from the service of the Carrier on December 29, 1994.

The Organization contends the Carrier violated Rule 34 when it removed the Claimant from service pending the Investigation. It also argues the Carrier did not meet its burden of proving the Claimant guilty.

A review of the transcript reveals that the Claimant and his Supervisor had an altercation on the date in question during which the Claimant grabbed the Supervisor by the shirt.

Under the circumstances present in this case the Carrier did not violate Rule 34. However, the Claimant had 13 years of service at the time of the incident. While the Board does not like to interfere in the Carrier's right to discipline its employees, in this case the penalty is too harsh. Accordingly, the Claimant shall be returned to service with seniority unimpaired, but without pay for time lost.

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 18th day of May 1998.