

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13276

Docket No. 13213

98-2-96-2-134

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

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

"Dispute - Claim of Employee:

That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the 'Carrier') violated Rule 40 of the Controlling Agreement, Form 2641-Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the 'Organization') when it wrongfully and unjustly issued a ten day deferred suspension to Chicago, Illinois Machinist W. B. Richardson (hereinafter referred to as the 'Claimant') cited in violation of Carrier Rule 1.6 regarding his allegedly being involved in an altercation during the second shift on November 3, 1995.

Accordingly, we request that for this improper discipline, all records and reference to this matter be removed from his personal record. Additionally, if this suspension resulted in any lost time for the Claimant, we request that he be compensated for all lost time and benefits as provided for in Rule 40(i) of the Controlling Agreement, as amended."

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 given a deferred suspension of 10 days as a result of a formal Investigation held on November 21, 1995. On November 3, 1995 Claimant was found to have violated Rule 1.6 which reads:

“Conduct

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome
- or
7. Discourteous”

There is no dispute, from the record of the Hearing, that the Claimant and another employee had a heated argument, including threats, swearing and spitting.

The Organization argues no blows were struck, ergo the 10-day deferred suspension was unwarranted.

Quite to the contrary, based on the facts brought out at the Investigation the Carrier was lenient in this case. This Board will not change the actions of the Carrier.

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 18th day of May 1998.