

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13334  
Docket No. 13203  
98-2-96-2-113**

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

**(International Brotherhood of Electrical Workers  
( System Council No. 14  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company  
( (Western Lines)**

**STATEMENT OF CLAIM:**

- “1. That the Southern Pacific Lines erred and violated the contractual rights of Electrician D.T. LaPu when they unjustly dismissed him from service.**
- 2. That, therefore, Mr. LaPu be compensated for all wages lost, including any lost overtime that he was deprived of while out of service.**
- 3. That Mr. LaPu be restored with all rights unimpaired, including service and seniority, vacation, payments of hospital and medical insurance, group disability insurance, Railroad Retirement contributions and loss of wages to include interest at the rate of six percent (6%) per annum.”**

**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.**

**By letter dated August 28, 1995, the Claimant and a co-worker, Mr. D. R. Tudayan ("Tudayan") were directed to attend a Hearing "to develop the facts and place responsibility, if any, in connection with your alleged altercation which took place in the locker room approximately 10:55 p.m., prior to your on-duty time, and, in addition, the continuance of this alleged altercation after your on-duty time of 11:00 p.m., Friday, August 25, 1995, while working as Electricians, West Colton Locomotive Maintenance Plant."**

**Subsequent to the Investigation, both employees were found guilty. Both were dismissed from service.**

**The Board, after a careful review of the testimony adduced at the Hearing held on this matter, does not find it necessary to dwell upon the details of the event that cause the Claimant and his co-worker to be discharged from employment. Both Claimants acted in a highly improper fashion. They engaged in a heated argument that resulted in a verbal and physical altercation. In light of the testimony, the nature and the intensity of the altercation could properly lead to permanent dismissal for each of the participants. However, Tudayan was reinstated to the service on a leniency basis. The record shows that the Carrier did not absolve Tudayan of his responsibility for his part in the locker room fight. It agreed to restore Tudayan, because he had 16 years of discipline-free service. It is well established that the Carrier has the sole discretion to grant leniency. However, given the facts and circumstances of the events that involved both the Claimant and Tudayan, a question does arise whether the Claimant was treated in a disparate fashion.**

**We find that he was not. The facts reveal that the Claimant was hired on February 12, 1979. Two years later, on February 25, 1981, he was dismissed for cause. On March 13, 1991, the Claimant was reemployed. He was again discharged on August 9, 1994. For reasons not found in the record, he was hired once again on January 12, 1995. The record shows that the Claimant was counseled on June 15, 1995 about attempting to strike a co-worker. Given the Claimant's very poor past record, it is apparent that past measures of discipline have not affected his behavior as contemplated**

by a progressive discipline process. There is no basis to conclude that the Claimant was treated with disparity.

**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 8th day of October 1998.**