

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13371**

**Docket No. 13236**

**99-2-97-2-2**

**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. 16**

**PARTIES TO DISPUTE: (**

**(Burlington Northern Railroad**

**STATEMENT OF CLAIM:**

- "1. That in violation of the controlling Agreement, Rule 35 in particular, Mechanical Department Electrician Dan R. Cottrell of Lincoln, Nebraska was unjustly and capriciously dismissed from service following an unfair and extremely biased investigation conducted on November 8, 1995.**
- 2. That the investigation held on November 8, 1995 was not the fair and impartial hearing as required by the rules of the controlling Agreement and the discipline assessed was unjust and unwarranted; and that the handling of this matter on the property failed to render a reversal of the dismissal.**
- 3. That accordingly, the Burlington Northern/Santa Fe Railroad Company should be directed to compensate and restore all wages, rights, benefits and privileges denied Mechanical Department Electrician Dan R. Cottrell; in addition, the entry of investigation and discipline assessed to be removed from his personal record and for Mr. Cottrell to be restored to service with the Burlington Northern/Santa Fe Railroad Company."**

**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 November 27, 1995 as a result of a formal Investigation held on November 8, 1995. Carrier found the Claimant falsified and was dishonest in reporting an alleged injury on August 23, 1995 and was late in reporting such injury.

A review of the transcript reveals the Claimant began employment with the Carrier on March 28, 1994.

Claimant testified that on October 2, 1995 his left knee had been injured when coming to a standing position after squatting. On October 5, 1995 Claimant laid off work because the knee was worse. On October 10, surgery was performed on the knee. On the day before the surgery, October 9, 1995 Claimant called the Carrier's General Foreman asking to fill out an injury report stating that the injury first occurred on August 23, 1995.

There is no dispute in the facts of the case. While the Claimant expressed fear in filing a report when the first incident occurred, August 23, 1995, there is no evidence to support this fear.

The Organization argues the punishment assessed is unduly harsh.

Claimant had only one and one-half years service at the time of the incident. The Doctor who performed the surgery states the time frame August to October is very typical of the type of injury as in this case. However, this Board has held numerous times that failure to report an injury promptly is a serious offense. (See Third Division Awards 23484, 26663; Second Division Awards 12740, 12885, 12894). Based on Claimant's short length of service, the Board will not overturn the actions of the Carrier.

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**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 10th day of March 1999.**