

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13373

Docket No. 13247

99-2-97-2-11

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 Herman Ward was unjustly suspended from the service of the Burlington Northern Railroad Company for a period of thirty (30) days and the entry of investigation and discipline assessed into his personal record as a result of an unfair and heavily biased investigation held on July 18, 1995;**
- 2. That the investigation conducted was not fair and impartial as required by the controlling Agreement, and;**
- 3. That the Burlington Northern Railroad Company should be directed to make Electrician Herman Ward whole for all wages, rights, benefits and privileges which have been denied him and in addition, the entry of investigation and discipline assessed against him to be removed from his personal 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 suspended for 30 days by the Carrier on July 21, 1995 as a result of an Investigation on July 18, 1995. Carrier found that Claimant violated General Rule 1.10 which reads:

“Unless permitted by the railroad, employees on duty must not keep personal pagers turned on and in their possession.”

The record of the Investigation reveals that while attending another formal Investigation for a different incident a beeper went off. After searching the room the Carrier’s Hearing Officer ascertained that the beeper was in the Claimant’s canvas bag which was on the floor and partially under the table. After the pager was found it was determined the beeping sound was alerting the Claimant that the battery was low.

There is no dispute to the facts in this case. The only question is whether Rule 1.10 covers an employee during the holding of a formal Investigation.

The Rule pertains to “. . . employees on duty. . . .”

The Claimant is an Electrician apprentice. At the time of the incident, Claimant was not on duty performing his electrical work. Therefore, this Board finds that the Carrier failed to prove the Claimant violated the Rule.

AWARD

Claim sustained.

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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 10th day of March 1999.