

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13658

Docket No. 13545

01-2-00-2-25

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(International Brotherhood of Electrical Workers
(System Council #16)**

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

- "1. That in violation of the current Agreement, Rule 35 in particular, Electrician Joyce Blocker was unjustly suspended for a period of twenty days and placed on probation for a period of three years by the Burlington Northern/Santa Fe Railroad Company following an investigation held on September 23, 1997.**
- 2. That the investigation held on September 23, 1997, was not a fair and impartial investigation under the terms required by the rules of the current Agreement and that the issuance of the twenty-day suspension and the three-year probationary period was unjust, excessive and unwarranted.**
- 3. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to make Electrician Joyce Blocker whole for all lost wages, rights and benefits which were adversely affected by this suspension and further that all record of this matter be removed from her 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.

As a result of an Investigation, the Claimant, an Electrician, received a 20 day suspension stemming from a confrontation with another employee, Electrician Mark Eng and was further placed on probation for three years.

The record shows that on August 26, 1997, Eng and the Claimant had a disagreement over the Claimant's alleged telling other employees that Eng was not properly changing filters. According to the Claimant, Eng yelled at her and used profanity and when she tried to find out what his problem was, Eng stepped close to her and put his hand in her face. According to Eng, he asked the Claimant why she would say that he was not changing the innermost filters on cars and the Claimant became upset and mad, and yelled at him accusing him of not changing the filters. Eng states that he started to walk away and heard her say something, which he later learned was "If you're a man we'll settle this right now."

According to Sheet Metal Worker L. Williams, Eng made a comment to the Claimant and then waived his hand in front of the Claimant's face. According to Carman J. Hall, he heard Eng tell the Claimant that he had changed the filters; he saw Eng raise his hand in front of the Claimant's face and he heard the Claimant say to Eng that "We can settle it right now if you're a man."

Rule S-28.7 provides:

"Employees must not enter into altercations with each other, play practical jokes or wrestle while on duty or on railroad property."

Substantial evidence in this record shows that the Claimant and Eng were involved in an altercation in violation of Rule S-28-7. There is no need for the Carrier

to demonstrate physical contact for there to be a violation of that Rule. The exchange between Eng and the Claimant constituted an "altercation."

With respect to the amount of discipline imposed, we agree with the Organization and find that a 20-day suspension for the Claimant is excessive. For all purposes, Eng and the Claimant engaged in the same degree of misconduct. Eng's participation in the altercation and his waving his hand in front of the Claimant's face appears to us no different in degree from the Claimant's participation in the altercation and her provoking statement to Eng that if he were a man they could settle the matter. In Second Division Award 13659, we upheld the ten-day suspension given to Eng for the incident. Under the circumstances, we believe that the Claimant should receive the same discipline as Eng. The Claimant's suspension shall therefore be reduced to ten days and Claimant shall be made whole less the consequences of a ten-day suspension. Further, because Eng did not receive a probationary period accompanying his suspension, we shall require the reference to the probationary period given to the Claimant be expunged from the Claimant's record.

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 11th day of December, 2001.