

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13685
Docket No. 13564
02-2-00-2-45

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 No. 16
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of Rule 35 of the controlling Agreement, Mechanical Department Electrician Steven J. Peterson was unjustly dismissed from the service of the Burlington Northern/Santa Fe Railroad Company following an unfair and biased investigation conducted on October 19, 1998.
2. That the investigation conducted on October 19, 1998 was not the fair and impartial hearing as required by the rules of the controlling Agreement and that the discipline assessed was unjust and unwarranted.
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 Steven J. Peterson; in addition, the entry of investigation and discipline to be removed from his personal record and for Mr. Peterson 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.

After Investigation, and by letter dated October 30, 1998, the Claimant was dismissed from service for theft of the Carrier's property.

The facts are really not in dispute. On October 7, 1998, the Claimant, an Electrician Apprentice, took two cases of the Carrier's bottled water and put it in the back of his pickup truck to use when he went elk hunting.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. Rule S-28.18 states that "[e]mployees must not use railroad property for their personal use." The water was the Carrier's property. The Claimant took it for his personal use - i.e., theft. He violated the Rule.

The Claimant's assertion that he could take the water for safety reasons as personal protective equipment is simply not supportable. The water was Carrier property. The Claimant took it for his personal use.

Nor do we find the decision to dismiss the Claimant to be arbitrary. The Claimant was a short term employee with prior disciplinary actions. Moreover, the demonstrated violation was serious and it does not appear that the Claimant understands the seriousness of his misconduct. Dismissal was not arbitrary.

The Organization's procedural arguments do not change the result.

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 24th day of April, 2002.