

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13686

Docket No. 13565

02-2-00-2-46

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 the current Agreement, Rule 35 in particular, Mechanical Department Electrician Lawrence M. Thivel was unjustly dismissed by the Burlington Northern/Santa Fe Railroad Company following several investigations conducted in his absence on October 9, 1998.**
- 2. That the investigations held on October 9, 1998 were not the fair and impartial investigations under the terms required by the rules of the current Agreement, and that the supreme penalty of dismissal was unjust, excessive and unwarranted.**
- 3. That accordingly, the Burlington Northern/Santa Fe Railroad Company should be directed to make Mechanical Department Electrician Lawrence M. Thivel whole by restoring him to its service with seniority rights unimpaired, restore all rights, benefits and privileges due him under the Agreement which was adversely effected by his dismissal and compensate him for all lost wages beginning from the date of his dismissal and continuing until he is restored to service. Claim also includes removal of all reference of the subject disciplinary hearings from Mr. Thivel's 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 separate notices and combined Investigations, by letter dated October 19, 1998, the Claimant, an employee with over 20 years of service (since July 1977) was reprimanded, suspended for ten and then 20 days, and was ultimately dismissed from the Carrier's service for being absent without authority. The reprimand covered absences for September 7, 8, 9, 10, 11, 14, 15, 16, 17, 1998; the ten-day suspension covered additional absences for the period September 18 and 21, 1998; the 20-day suspension covered absences for the period September 22, 23, 24, and 25, 1998; and the dismissal covered absences for the period September 28, 29, 30, and October 1, 1998. The record further indicates that the Claimant left work on August 19, 1998 to get EAP assistance (which he did not get), and, effectively, was not heard from again.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. Rule S-28.14 requires that "[e]mployees must report for duty at the designated time and place . . . [e]mployees must not be absent from duty without proper authority." When the Claimant stopped coming to work, the Claimant did not meet that requirement.

However, we find that the measure of discipline imposed - ultimately, dismissal - was excessive and therefore arbitrary. First, the Claimant is a long term employee. The Claimant's long service since July 1977 weighs in his favor. Second, the Carrier asserts that it effectively imposed progressive discipline, but the record shows that the Claimant was repeatedly disciplined (warning, ten and 20 day suspensions and then dismissal) for what was, in actuality, one incident. The Claimant stopped coming to work. As shown by the Carrier's letter of October 19, 1998, the Carrier used segments of that prolonged absence as a basis for four disciplinary actions. To the extent that progressive discipline seeks to send a message to an employee that he must conform his conduct to the Carrier's Rules (here, the obligation to come to work and not be absent without proper authority) and accomplishes that goal through increasing amounts of discipline when the message is not understood, issuing four increasing disciplinary actions from a reprimand to a dismissal in one letter does not give progressive discipline the opportunity to work.

In terms of a remedy, the Claimant's dismissal shall be reduced to a long term suspension. The Claimant shall be entitled to reinstatement to his former position. However, because the Claimant stopped coming to work, he shall not be entitled to compensation of time lost.

We shall place further conditions upon the Claimant's entitlements under this Award.

First, within 45 days of the date of this Award, the Claimant shall report for and pass a return to duty examination to be given by the Carrier, which, at the Carrier's option, shall include drug/alcohol screens.

Second, as a condition of his reinstatement and continued employment, the Claimant shall be evaluated by the Carrier's EAP counselor. In the event the EAP determines that the Claimant would benefit from its services, the Claimant shall enter into any such program designed for him and comply with all aspects of such program.

Third, the Claimant must understand that his reinstatement is on a last chance basis. In the event the Claimant fails to comply with any of the above stated conditions, he shall be immediately dismissed.

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 24th day of April, 2002.

