

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13714

Docket No. 13606

03-2-01-2-8

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

- “1. That the Belt Railway Company of Chicago, (hereinafter will be referred to as the Carrier) violated the applicable provisions of Rule 20 of the September 8, 1950 Agreement, as subsequently amended, when, subsequent to an investigation held on January 4, 2000, the Carrier unjustly and improperly dismissed from service Locomotive Shop Machinist employee Robert L. Katterman (hereinafter referred to as the “Claimant”).
2. That accordingly, the Carrier be ordered to:
 - (a) Restore Claimant to service with all seniority and vacation rights unimpaired.
 - (b) Claimant be made whole for all lost wages, health and welfare benefits and any other entitlements commencing December 8, 1999.
 - (c) Expunge Claimant’s personal record of any and all references to the investigation charges and subsequent discipline imposed in this instant case.”

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.

On January 6, 2000, the Claimant was dismissed as a result of an Investigation held on January 4, 2000. The Carrier found that the Claimant had acted in an aggressive manner towards Diesel Foreman K. W. Taylor on December 7, 1999.

The record reveals that the Claimant reported for work at 7:00 A.M. on December 7, 1999. He was instructed to remove a door from a locomotive in order to install weather stripping. The Claimant argued that the work was a two-man job. The Diesel Foreman informed the Claimant that when it got time to remove the door, help would be provided. The Claimant admitted there was another Machinist working on the locomotive at the same time.

The Claimant was not satisfied with the Diesel Foreman's explanation on how the work was to be done, and became agitated. The Claimant threatened the Diesel Foreman to settle the matter after work. After a brief time the Diesel Foreman removed himself from the area and called M. K. O'Donnell, Chief of Belt Railway Police. Upon the Chief's arrival at the shop it was determined that the Claimant had clocked out and had left the property. The Claimant testified as follows:

"Q. When you left the property, that was with the intent of gaining your composure?

A. Yes, sir, Getting out of a volatile situation."

By the Claimant's own testimony it is obvious that the situation was heated.

There is no question that an altercation occurred with the Claimant and Diesel Foreman, but no blows were struck.

The only question is whether the discipline assessed was unduly harsh. At the time of the dispute, the Claimant had 21 years of service, which commenced on October 3, 1978 and had no disciplinary problems during the 16 year period between November 3, 1983 and June 1999. In June, the Claimant received a 10-day suspension for aggressive behavior against a fellow employee.

Based on all the facts and circumstances in this case the Board finds the discipline to be excessive. Therefore, the Claimant is to be returned to service with seniority restored, but without pay for time lost, provided he is able to pass the requisite examinations, including an evaluation by the Carrier's Employee Assistance Program.

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 20th day of March 2003.