

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13738
Docket No. 13633
03-2-01-2-40**

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

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway**

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rules 16 and 35 in particular, Electrician Rodney E. Blakeman was unjustly dismissed from the service of the Burlington Northern/Santa Fe Railroad company following an investigation held on April 20, 2000.**
- 2. That the investigation held on April 20, 2000 was not a fair and impartial investigation under the terms of the rules of the governing Agreement.**
- 3. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to return Electrician Rodney E. Blakeman to its service and that he be made whole for all lost wages, rights, benefits and privileges which were adversely effected by the unjust dismissal from service. In addition, that all record of this matter be removed from Rodney E. Blakeman’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.

On May 2, 2000 the Carrier dismissed the Claimant from its service. As a result of an Investigation held on April 20, 2000 the Carrier found that the Claimant violated Rules S-28.13 and S-28.14 by being absent from duty without authority beginning April 2, 2000.

The Claimant was afforded a fair and impartial Hearing. The fact that it was held without the Claimant present was because of his incarceration. Also, the Carrier is not required to delay the Investigation for two years until the Claimant gets out of jail.

The facts in this case are not in dispute. Beginning April 2, 2000 the Claimant began serving a two year sentence in the South Dakota prison for multiple DUI violations. The Claimant was not granted, nor did he request a leave of absence, which the Carrier would have no obligation to grant.

The Carrier has met its burden of proving the Claimant violated its Rules and that the discipline was warranted and not excessive. The Organization argues that the Claimant has cleaned up his act and no longer drinks alcohol and should be reinstated on a leniency basis. The granting of leniency lies with the Carrier and is beyond the purview of the Board.

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 30th day of June 2003.