

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13739**

**Docket No. 13634**

**03-2-01-2-41**

**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, Rule 35 in particular but not limited thereto, Mechanical Department Electrician J.C. Thompson was unjustly disciplined by the Burlington Northern/Santa Fe Railroad company (formerly Burlington Northern Railroad Company) following an investigation held on June 8, 2000.**
- 2. That the investigation held on June 8, 2000 was not a fair and impartial investigation under the terms of the current Agreement and that the ten (10) days suspension and probationary period of one (1) year was unjust, unwarranted and excessive.**
- 3. That accordingly the Burlington Northern/Santa Fe Railroad Company be directed to make Electrician J.C. Thompson whole for all lost wages, rights, benefits and privileges which were adversely effected by the unjust discipline, and further that all record of the charges, investigation and discipline be removed from electrician J.C. Thompson'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 June 26, 2000 the Carrier assessed the Claimant a Level S suspension of ten days. As a result of an Investigation held on June 8, 2000 the Carrier found that the Claimant violated Rule S-28.13 on May 22, 2000 by not complying with the instructions of the Carrier's Foreman.

A review of the record reveals that at about 8:00 P.M. on the date in question the Claimant was instructed by the Carrier's Locomotive Foreman to cut the leads on locomotive BN 9416. The Claimant refused to do so, saying there were employees junior to the Claimant that should be assigned the work.

The Claimant was given a fair and impartial Hearing. The Organization argues the Carrier did not prove its case. However, the Claimant admitted there was mention of work and that he inquired about junior employees doing the work. There was no argument that the work assigned was not electricians' work. Employees do not have a right by seniority to do or not do an assigned task. The fact that there may have been junior employees working at the same time does not give the Claimant the right to refuse work.

The Organization argues the discipline assessed was excessive. To the contrary, insubordination is usually an offense that requires a more severe punishment. There is no basis for the Board to alter the discipline assessed in this case.

**AWARD**

Claim denied.

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**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.**