

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

BURLINGTON NORTHERN INC.
(Formerly Northern Pacific Railway Company)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Northern Pacific Railway Company (now part of Burlington Northern, Inc.), hereinafter referred to as "the Carrier" violated the Agreement in effect between the parties, Rule 28 thereof in particular, by its action in assessing discipline in the form of fifteen (15) days actual suspension from service upon Train Dispatcher R. R. Flanigan following formal hearing held on July 16, 1969. The record of said formal hearing fails to support Carrier's charges of rules violation by the Claimant, thus imposition of discipline was arbitrary and unwarranted.

(b) Carrier shall now be required to compensate Claimant for wage loss sustained due to Carrier's action, and to clear his employment record of the charges which provided the basis for said action.

OPINION OF BOARD: Claimant was suspended for 15 days following a formal investigation on charges that he had violated Carrier rules as a result of an altercation with his supervisor on July 11, 1964. Petitioner contends that in light of the testimony adduced at the investigation the finding of guilt and the assessing of discipline was arbitrary and capricious.

We have considered the transcript of the investigation, the arguments of the parties and the awards cited by both. We find that Claimant was accorded a fair hearing during which substantial evidence was adduced on which Carrier based its conclusion that Claimant violated the Rules in Question. We find that none of Claimant's procedural rights were denied him. We note that Claimant admits on the record that the hearing was fair and impartial and in accord with the schedule rules.

We are quick to modify discipline meted out by Carriers where there are mitigating circumstances or where the discipline assessed shows an abuse of discretion. (Award 12985) However, Carrier's decisions are left undisturbed at this appellate level when (1) Claimant was afforded a fair and impartial hearing; (2) the finding of guilt is supported by substantial evidence and (3) the discipline is reasonable. (Award 13179).

Based on the record before us we cannot find that Carrier was arbitrary or capricious in assessing the discipline after having found on substantial evidence that Claimant had violated the rules. Accordingly, we shall deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1972.