

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31517
Docket No. MS-32164
96-3-94-3-449

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (John F. McAlpine
(
(Burlington Northern Railroad Co.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

This notice is in regards to a claim filed in my behalf for loss of all wages, including any an all overtime, and any and all fringe benefits at protected rates for February 27, 1991 to and including March 28, 1991, while serving a thirty (30) day suspension from the service of the Burlington Northern Railroad. The file references for this incident are File: in 90-0313 the Burlington Northern Railroad investigation file and Transportation Communications Union File: d-8018(11-91)d-558. This claim was assigned the following number by the highest designated Officer of the Burlington Northern Railroad 1 CLA 91-11-04A."

FINDINGS:

The Third 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.

Pursuant to Claimant's request for a hearing before this Board, and after notice thereon, the Board convened in Chicago, Illinois on February 6, 1996. Notwithstanding Claimant's request for a hearing, Claimant did not appear at the designated time and place. After waiting a reasonable period of time, this Board proceeded with consideration of arguments.

After Investigation conducted on February 6, 1991, Claimant, a Clerk in the Carrier's Seattle Crew Office, was assessed a 30 day suspension for misconduct on December 2, 1990.

The record shows that on the morning of December 2, 1990, Claimant was derisive and disrespectful to Chief Crew Clerk D. R. Munger as Claimant attempted to determine the location of an employee via the computer system. Aside from Munger's testimony to that end, a corroborating version of the incident was offered by Chief Clerk G. H. Smith (Tr. 20):

"Q. Okay. And Mr. Smith, did you hear an altercation between Ms. Munger and Mr. McAlpine on this morning?

A. Yes, I did.

* * *

... Mr. McAlpine told her to get her head out of her ass. And told her she has a mental problem. ... He called her an idiot and near the end of the altercation called her a miserable bitch to work with"

Claimant's statements to Munger were picked up on recording equipment in the Dispatcher's Office. A phone left off the hook which was connected to the Dispatcher's Office resulted in the following transcription of the incident as Claimant attempted to determine the location of an employee:

"John: Well let me find out where the guy is.

De: Go sit down and when we have a moment we will tell you.

John: You're a real pain in the ass.

* * *

De: You have to (garbled) get off my machine.

John: You're an idiot, I can't get in here
to find this member

* * *

You're being a real pain in the ass.

* * *

You've got a serious mental problem

* * *

It's about time you got your God
damn head out of your ass

De: John

John: You're really pissing me off, you
know

* * *

If you'd sit here and shut up and
just would have done it I would have
found my man and been out of your
hair and you wouldn't even know I'd
been over there, Damn idiot.

De: No, I'm not an idiot

John: Yeah, you are an idiot

* * *

John: It explains the why. You're a
miserable bitch to work with

Unknown Male Voice: You'd better watch out
who you're talking to John, you
gonna get your ass in a lot of
trouble for talking like that.

John: That's fine (garbled)."

Substantial evidence supports the Carrier's determination that
Claimant violated Safety Rule 563 ("... Courteous, orderly conduct
is required of all employees. Boisterous, profane, sexist or

vulgar language is forbidden.") and Safety Rule 564 ("Employees will not be retained in service who are ... insubordinate ... quarrelsome or otherwise vicious").

With respect to the amount of discipline, given the extent of Claimant's misconduct, we cannot say that a 30 day suspension was arbitrary or capricious.

The parties' procedural arguments do not change the result. In light of the result, the Carrier's argument that the claim was not appealed in accord with the provisions of Rule 56 is moot. Claimant's argument that he was denied a fair Investigation is rejected. Our review of the record shows the Investigation was conducted in a fair and impartial manner. Moreover, with respect to Claimant's contention that he was entitled to pre-investigation discovery, no rule support exists for such an assertion.

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 Third Division

Dated at Chicago, Illinois, this 20th day of June 1996.