

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20189
Docket Number CL-20303

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees

PARTIES TO DISPUTE:

(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7359) that:

1. Carrier violated the Working Agreement with an effective date of March 3, 1970, between the parties hereto, when on the 28th day of January, 1972, it suspended Burns Booker, Jr. from his regular assignment of Janitor, Job Number 119-061, Cicero, Illinois.

2. Carrier violated the Agreement between the parties hereto when on February 18, 1972, it discharged Burns Booker, Jr.

3. Carrier shall restore Burns Booker, Jr. to service with seniority rights unimpaired, showing exoneration, including the right to return to his former position or any position bulletined during his absence and be reimbursed for any and all loss of compensation incurred, including any losses suffered by him and/or his dependents as a result of the cancellation of Group Policy Contract 23000 and the life and dismemberment insurance, which protection terminated on date of dismissal.

OPINION OF BOARD: The Organization asserts a procedural deficiency, allegedly prejudicial to Claimant. The docket shows that the individual who rendered the decision and assessed the penalty was not physically present at the investigation. Claimant raised this procedural issue during the handling of the matter on the property.

In Award 20099, we noted conflicting authority on the subject of meaningful determinations being rendered by an individual other than the Hearing Officer. In our Award 20164 we noted that under certain circumstances, it may well be that a Claimant's procedural rights require that an individual who was present at the investigation and observed the demeanor, actions, etc. of the witnesses personally resolve questions of credibility.

However, in this dispute, similar to our determination in Award 20164, we feel that any possible procedural error was not prejudicial to Claimant due to his own admissions at the investigation.

Claimant was charged with insubordination and failure to follow instruction from proper authority.

Claimant was told to alter his priority of performing cleaning duties, and was advised to clean the General Yardmaster's office at a certain hour.

Although Claimant made numerous contentions and offered various reasons for his actions, at the investigation he conceded that he received a direct order to clean the General Yardmaster's office, and he concedes that he refused to comply. It is undisputed that he read, at the time of the incident, a Carrier Rule which requires employees to follow instructions from proper authority, and there can be no serious question that the order was issued, directly to Claimant, by a proper authority.

Resolving any possible procedural deficiencies in favor of Claimant, the Board is of the view that substantial and credible evidence was presented at the investigation, including Claimant's own statements, to support the charges. We will not disturb the assessed penalty absent a showing that the Carrier's decision was so unjust, unreasonable, arbitrary, capricious or discriminatory so as to amount to an abuse of discretion. We are unable to make such a finding in this case.

The claim will be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.