

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25168

Docket No. 44894

00-1-99-1-B-2143

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

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

“Engineer Peterson be reinstated immediately with seniority unimpaired; paid for all time lost, and that the notation relative to this incident be removed from his personal record.”

FINDINGS:

The First 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.

The Claimant was dismissed from the service of the Carrier on May 13, 1998 as a result of an Investigation held on May 5, 1998.

The record shows that the Claimant was sent a letter requesting information on being absent without authority since March 30, 1998. It reads in part:

“It has been brought to my attention that you have been absent from your normal duties as a Chicago Division Conductor since March 30, 1998.

This letter will serve to notify you at this time to show cause as to your continued unauthorized absence by Friday, April 17, 1998. If you have been off for medical reasons, you will be required to provide BNSF Ft. Worth Medical Management, P.O. Box 691033, Ft. Worth, TX, 96161-0033 with written documentation sent from your Doctor's office, on his stationery, pertinent information relating to any medical situation that may have prevented you from resuming your duties. If you have not attempted notification to BNSF Medical Management, you must show documentation from your Doctor that any incapacitation has prevented you from contacting BNSF.

If your unauthorized absence is for other than Medical reasons, you must provide documentation that may have been received by you from a Supervisor of BNSF excusing you from your duties.

Your failure to provide documentation as referenced above sufficient in nature to excuse your continued unauthorized absence, will result in a formal investigation to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to comply with instructions, and your alleged unauthorized absence."

The Claimant failed to furnish the information requested and an Investigation was scheduled for April 26, 1998, later a notice was sent postponing the Investigation until May 5, 1998. The Investigation was held on May 5, 1998. Neither the Claimant nor his representative was present at the Investigation.

This case is a tragedy of errors. First the notice of Investigation states the Investigation will be held on May 5, 1998. It appears from the record it was held on May 4, 1998. The letter of discipline reads:

"This letter will confirm that as a result of our formal investigation on May 4, 1998, concerning your violation of Rules 1.13 and 1.15 of the General Code of Operating Rules, you are dismissed from employment of the Burlington Northern Santa Fe."

In a letter to the Organization's Local Chairman, the Carrier's Division Superintendent states that the Investigation was actually held on the 5th of May.

Assuming that the Investigation was held on May 5, 1998, the transcript is four pages long and it contains nothing but the notices of Investigation and the fact that the Claimant was not present, nor was a representative of the Organization present.

The Carrier bears the burden of proving the Claimant violated its Rules. It had a chance for a "slam dunk" and missed. The transcript is void of any evidence. Therefore, the Carrier failed to meet its burden.

As a result of the Carrier's errors, the Claimant shall be reinstated with seniority unimpaired and any notation relative to this discipline removed from his personal record. As to monetary damages, the Claimant had not been at work for over a month, failed to give any reason for his absence, and failed to show up at his Investigation. The Claimant also indicated that he no longer wanted to work as an engineer. The Claimant wanted to be a conductor. The Board does not intend to give the Claimant a windfall as a result of the Carrier's errors. There is no indication in the record that the Claimant would have worked had he not been fired.

Therefore, the Board will Award the Claimant \$1.00 (one dollar) as monetary damages.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 27th day of October, 2000.