

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25282

Docket No. 44882

01-1-99-1-S-6792

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Appeal in behalf of Hostler C. R. Soder for reinstatement from unjust dismissal, pay for all time lost including attending investigation, pay for any lost vacation benefits, along with expungement from personnel record of such discipline for alleged altercation in the Bensenville Diesel House hostler locker room on March 24, 1997."

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.

On March 24, 1997, the Claimant was engaged in an altercation with another employee, Mark Rogers, in the locker room at the Bensenville Yard Diesel Shop. As a result of this incident, both employees were directed to attend a formal Investigation. Following the Investigation, the Claimant was dismissed from service. It is undisputed that Mr. Rogers was assessed a five day suspension. The Organization does not deny that the Claimant was involved in an altercation, but suggests that he was at less fault

than the other employee, but received a substantially more severe discipline. The Organization notes that the Claimant had 28 years of service at the time of this incident.

It is apparent from a review of the transcript of the Investigation that the incident began as a verbal altercation, and then turned physical. While there are conflicts concerning who started the verbal altercation, it is evident Mr. Rogers made the first physical contact. The Claimant, however, did not walk away from the confrontation, as he should have done. The Board finds no fault with the Carrier's determination that both employees were subject to discipline for this incident.

The Carrier justifies the disparity in the discipline imposed based upon differences in the records of the two employees. It avers it only looks at the past two years of service for considering progressive discipline, and Mr. Rogers had no discipline during that time. This overlooks the fact that he had only one and one-half years of service. The Claimant, on the other hand, was a 28 year employee. The Carrier points to the fact that the Claimant had just received a ten day suspension for speeding and damaging locomotives. Under its discipline system, the Carrier asserts the next violation would mandate dismissal. While such a policy may be appropriate in most cases, it is apparent the Carrier, by invoking such a strict policy, did not give consideration to the Claimant's long term of service.

Under the circumstances, the Board finds that the discipline imposed by the Carrier was excessive. Accordingly, the Carrier is directed to reinstate the Claimant to service without loss of seniority, but without back pay. The Claimant is to understand that any future violations of the Carrier Rules could result in his permanent dismissal.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 3

Award No. 25282
Docket No. 44882
01-1-99-1-S-6792

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 12th day of December, 2001.

