

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13658

Docket No. 13545

01-2-00-2-25

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

(International Brotherhood of Electrical Workers
(System Council #16)

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

- "1. That in violation of the current Agreement, Rule 35 in particular, Electrician Joyce Blocker was unjustly suspended for a period of twenty days and placed on probation for a period of three years by the Burlington Northern/Santa Fe Railroad Company following an investigation held on September 23, 1997.
2. That the investigation held on September 23, 1997, was not a fair and impartial investigation under the terms required by the rules of the current Agreement and that the issuance of the twenty-day suspension and the three-year probationary period was unjust, excessive and unwarranted.
3. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to make Electrician Joyce Blocker whole for all lost wages, rights and benefits which were adversely affected by this suspension and further that all record of this matter be removed from her personal record."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

to demonstrate physical contact for there to be a violation of that Rule. The exchange between Eng and the Claimant constituted an "altercation."

With respect to the amount of discipline imposed, we agree with the Organization and find that a 20-day suspension for the Claimant is excessive. For all purposes, Eng and the Claimant engaged in the same degree of misconduct. Eng's participation in the altercation and his waving his hand in front of the Claimant's face appears to us no different in degree from the Claimant's participation in the altercation and her provoking statement to Eng that if he were a man they could settle the matter. In Second Division Award 13659, we upheld the ten-day suspension given to Eng for the incident. Under the circumstances, we believe that the Claimant should receive the same discipline as Eng. The Claimant's suspension shall therefore be reduced to ten days and Claimant shall be made whole less the consequences of a ten-day suspension. Further, because Eng did not receive a probationary period accompanying his suspension, we shall require the reference to the probationary period given to the Claimant be expunged from the Claimant's record.

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 Second Division

Dated at Chicago, Illinois, this 11th day of December, 2001.