

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13737

Docket No. 13632

03-2-01-2-39

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

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

- "1. That in violation of the current Agreement, Rule 35 in particular, Electrician Rodney E. Blakeman was unjustly dismissed from the service of the Burlington Northern/Santa Fe Railroad company following an investigation held on April 27, 2000.
2. That the investigation held on April 27, 2000 was not a fair and impartial investigation under the terms required by the rules of the current Agreement.
3. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to return Electrician Rodney E. Blakeman to its service and he be made whole with respect to all lost wages, rights, benefits and privileges which were adversely affected by the unjust dismissal from service. In addition, that all record of this matter be removed from Rodney E. Blakeman's personal record all in accordance with Rule 35 of the controlling Agreement."

FINDINGS:

The Second 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 May 23, 2000 the Carrier dismissed the Claimant from its service. As a result of an Investigation held on April 27, 2000 the Carrier found that the Claimant violated Rules S-28.6 and S-28.9. The Claimant was sentenced to jail for violating probation by being found guilty of DUI for the third time.

This case is a companion to the case in Second Division Award 13738.

There is no dispute to the facts in this case. On November 27, 1996 the Claimant pled guilty to DUI for the third time, and was sentenced as follows:

- "(1) Defendant shall be placed under the supervision of the Chief Court Service Officer of this Judicial Circuit, or his representative thereof, for a period of 4 years.
- (2) Defendant shall obey all the conditions placed upon him by the Court Service Officer (said conditions to be attached and incorporated by reference with the Order and to be signed by the Defendant).
- (3) Defendant shall pay costs in the amount of \$26.50 + \$64.00 and pay a fine in the amount of \$1,000.00. Said fine and costs shall be paid today.
- (4) Defendant shall serve 45 days in the Lawrence County Jail. Defendant can serve his time in Nebraska at his expense with work release.
- (5) Defendant shall pay a probation supervision fee of \$25.00 per month.
- (6) Defendant shall violate no laws during the time of his probation.

- (7) Defendant shall not possess or consume alcoholic beverages or mind altering substances during the term of his probation.
- (8) Defendant shall submit to a warrantless search and seizure of his blood, breath or urine, person, possessions or residence at the request of any law enforcement officer or his court service officer.
- (9) Defendant shall continue in alcohol treatment and attend. . . ."

On March 23, 2000 the Claimant was sentenced to two years in jail as a result of another DUI, which began on April 2, 2000.

The Carrier found that the Claimant violated Rules S-28.6 and S-28.9 which read:

"S-28.6 Conduct

Employees must not be:

- (1) Careless of the safety of themselves or others
- (2) Negligent
- (3) Insubordinate
- (4) Dishonest
- (5) Immoral
- (6) Quarrelsome
- or
- (7) Discourteous

S-28.9 Respect of Railroad Company

Employees must behave in such a way that the railroad will not be criticized for their actions."

The Carrier bears the burden of proving the Claimant violated its Rules. Nowhere in its Submission does the Carrier explain how Rule S-28.6 was violated. It did argue that the Claimant's conduct was reprehensible and damaged the Carrier's reputation in Alliance, Nebraska. However, the record is void of any evidence that the

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Claimant's action was reported in the newspapers. The Claimant was in jail in South Dakota not Nebraska. Nor did the Carrier show it lost business as a result of the Claimant's actions.

The Carrier has failed to meet its burden in this case and the claim will be sustained. However, because Award 13738 upholds the dismissal of the Claimant, the Claimant will remain dismissed, with this discipline removed from his 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 30th day of June 2003.