

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

Parties to Dispute:

{ Brotherhood Railway Carmen of the United States
and Canada
{
{ Burlington Northern Inc.

Dispute: Claim of Employees:

- 1) That the Carrier violated terms of the current Agreement, particularly Rule 35, when Seattle Coach Cleaner, Michael Walker, was improperly and unjustly dismissed from service on December 16, 1977.
- 2) That accordingly, the Burlington Northern, Inc. be required to return Coach Cleaner, Michael Walker, to active service and reimburse him for all lost time during his suspension, restoration of all fringe benefits, including vacation, seniority, pass rights, made whole for all Health and Welfare and Life Insurance Benefits, made whole for pension benefits including Railroad Retirement and unemployment insurance, and made whole for any other benefits that he would have earned during the time he was held out of service commencing December 16, 1977 and continuing until properly restored to service.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

This is an appeal of Claimant's discharge for violation of Burlington Northern Safety Rules 665 and 667 and based upon evidence adduced at formal investigation held in Seattle, Washington, on November 17, 1977. Such evidence reflects that on November 10, 1977, Mr. Walker was working as a coach cleaner in the BN King Street Coach Yard at Seattle, with assigned hours midnight to 8:00 A.M. At about 4:30 A.M. on such date, Assistant Foreman-Cars J. R. Bangert assigned Claimant to clean roomette No. 10 on Car A-2602. The roomette was not cleaned, and at 6:50 A.M. Mr. Bangert and General Foreman-Cars G. A. Sterns found claimant sleeping on the couch in bedroom "C" of Car A-2602 and in the company of a female coach cleaner. The evidence given by Messrs. Bangers and Sterns is unequivocal, and while both of the recumbent employees deny that they were asleep, we have no reason to set aside Carrier's judgment as to the credibility of the witnesses.

We further find that the investigation was fairly and properly conducted. Specifically, we reject the Organization's claim that we should vitiate the discipline because of the roles played by Assistant Terminal Superintendent G. T. Rasmuson in conducting the investigation as well as determining guilt and assessing discipline.

The remaining question is whether or not discharge of Mr. Walker is, under all the circumstances, supported by just cause. The record reflects that from 4:30 A.M. until 6:50 A.M. on the morning in question Claimant failed to do his job, sleeping at least part of the time. A host of awards of this and other divisions of the National Railroad Adjustment Board and of Public Law Boards declare that sleeping on duty is an offense for which an employee may be dismissed. We have no justification for modifying the discipline assessed.

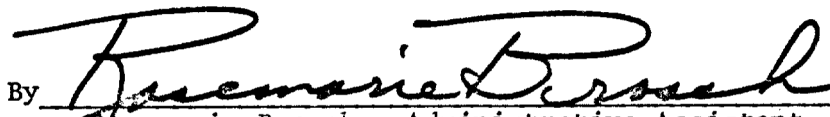
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of December, 1980.