

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician E. Quick was unjustly withheld and later dismissed from service of the Burlington Northern Inc., following investigations held on dates of October 3 and 7, 1980.
2. That the Burlington Northern Inc., failed to provide accurate transcripts on either the October 3, or October 7, 1980 investigations giving accurate account of what transpired in those hearings.
3. That accordingly, the Burlington Northern Inc., be ordered to make the aforementioned E. Quick whole by restoring him to its service with seniority rights unimpaired, plus compensation for all wages lost and restoration of, or compensation for, any lost vacation benefits, railroad retirement benefits and all other benefits, rights and privileges to which he is entitled under prevailing Schedules Rules, Agreements or Law. Claim to begin on date Electrician E. Quick was unjustly withheld from service and to continue until adjusted.

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.

Claimant was dismissed from the service of the Carrier following a formal investigation. The Claimant had been notified that the investigation scheduled for October 3, 1980, was to be held with respect to allegations that Claimant had been found sleeping on duty. In a subsequent notice, Claimant was informed that another investigation was to be held on October 7, 1980, with respect to allegations of "... your alleged insubordination by your failure to fuel and sand Unit 1566, and failure to comply with instruction from proper authority while assigned ..."

With respect to the first investigation, two of the Carrier's supervisory personnel had observed Claimant sleeping on duty on September 23, 1980. At this investigation, and in addition to the testimony of the Carrier's witnesses, the Claimant admitted that he had "dozed off".

With respect to the second investigation, on September 18, 1980, Carrier's Mechanical Foreman found a Locomotive Service and Inspection Sheet on his desk, signed by the Claimant, and indicating that Claimant had sanded and fueled Engine 1566. When the train crew arrived and prepared to depart from the terminal, the engineer found it almost out of sand and low on fuel. At this investigation, and in addition to Carrier's witnesses, Claimant admitted that he did not fuel and sand the engine.

The Organization claims that the dismissal of the Claimant was arbitrary, capricious and an abuse of managerial discretion. The Organization further asserts, that due to inaccuracies in the transcripts of the two investigations, the investigations were not fair and impartial.

We cannot agree with the contentions of the Claimant. First, with regard to the claim that the transcripts were not accurate we believe that Fourth Division Award 3306 is relevant to our consideration:

"It is also charged that the transcript of the investigation is incomplete and inaccurate. To some extent this is true. The record of the proceedings was not taken by an experienced shorthand court reporter. But how inaccurate is it? Are the essential facts relating to the Claimant's alleged responsibility sufficiently reported so that a reasonable conclusion can be reached?

None of the alleged inaccuracies and omissions contained in Petitioner's submission are verifiable. There is no evidence which supports the veracity of the alleged admissions and omissions. They are no better than the record itself. An admitted insufficient transcript does not necessarily invalidate the entire proceedings." (Referee Dolnick, Fourth Division, 3306)

We feel that the above is pertinent to the instant dispute. Further, we find that the Claimant's own admission of guilt as to both of the charges alleged is extremely important to this case. We must assume that Claimant would not make a statement against his interest lightly. Therefore, we must take his statement as an admission of the charges brought. This admission contradicts Claimant's assertion that he failed to receive a fair and impartial hearing and that the transcript inaccuracies resulted in an arbitrary or capricious hearing.

This Board has consistently held that a determination of discipline based upon substantial evidence adduced at a fair and impartial hearing will not be disturbed absent a finding of arbitrary or capricious behavior on the part of the hearing officer. We find none in this matter.

As to the discipline imposed in this case, we must sustain the finding of the Carrier. Sleeping is a serious offense, a violation of the agreement worthy of dismissal. This allegation alone, if proven, would warrant the penalty imposed in the instant dispute. Therefore, we have no other alternative but to uphold the position of the Carrier.

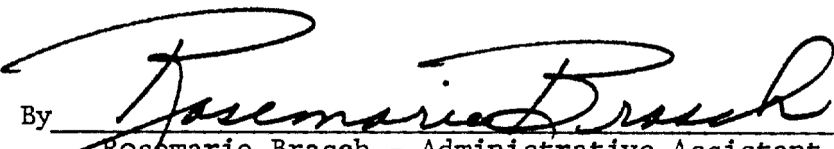
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of May, 1983.