

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement the Burlington Northern Inc., arbitrarily disciplined Shop Electrician Michael Wagner by unjustly placing a mark of censure on his file.
2. That accordingly, the Burlington Northern Inc., be ordered to remove the mark of censure. Claim to start on date of August 15, 1977.

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 waived right of appearance at hearing thereon.

An investigative hearing was held on July 18, 1977 to determine the facts and circumstances relative to claimant's asserted failure to report for duty "at the designated time and place on June 21 and 27, 1977" while assigned as an electrician at Clyde Roundhouse, Cicero, Illinois.

Claimant was found guilty of violating Rule 665 of the Burlington Northern Safety Rules and a mark of censure was entered on his personal record.

Rule 665 which is referenced hereinafter provides that, "Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

Claimant contends that carrier violated his due process rights when it didn't specify the preferred charges and permitted the hearing officer to act in multiple administrative - judicial roles. He asserts that he didn't violate Rule 665 and that carrier acted too precipitously when it convened an investigative hearing.

Carrier argues contrariwise.

In our review of the case, we find that the July 8, 1977 notice of hearing was sufficiently clear and detailed to allow claimant a reasonable opportunity to prepare a sound and intelligent defense. We also find that the hearing officer acted in a judicially responsible manner. There is no evidence in the record that he manifested a prejudicial course of conduct or was visibly biased toward the claimant.

Claimant reported to work late on both dates and the records support this conclusively. In fact, claimant acknowledged these latenesses during the investigative hearing. He contends, however, that in view of his past employment record and the specific circumstances of his lateness, that an investigative hearing was unwarranted, when a verbal admonishment would have sufficed. Inasmuch as there might be merit to these arguments, there is no precedent or Agreement Rule that constricts carrier to a system of escalated verbal chastisements. He was warned about the June 21st lateness and understood the possible consequences of repeated tardiness when he was late again on June 27th. Carrier did not act unreasonably when it issued the notice of hearing. In Second Division Award 7567, this Division stated in pertinent part that "It is implicit in the employee - employer relationship that each party shall live up to the bargain made. Employees accepting such positions are obligated to report for duty on or before the assigned starting time." We believe this decisional rationale is applicable herein. The record supports the charges and we have no justifiable substantive or procedural reason for disturbing the penalty imposed. We will deny the claim.

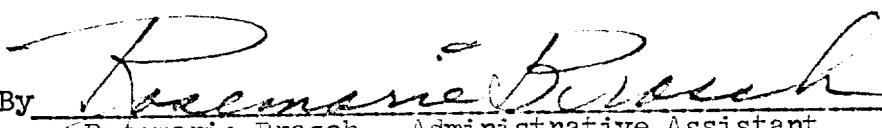
A W A R D

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 31st day of October, 1979.