

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.  
                          { (Carmen)  
                          { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Carrier violated terms of the current Agreement, particularly Rule 35, when Seattle Coach Cleaner, Linda F. Stepney, was improperly and unjustly dismissed from service on March 22, 1978.
2. That accordingly, the Burlington Northern, Inc. be required to return Coach Cleaner, Linda F. Stepney, to active service and reimburse her for all lost time during her 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 she would have earned during the time she was held out of service commencing March 22, 1978, 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.

An investigation was held on March 7, 1978 to determine whether Claimant slept while on duty and thus failed to comply with instructions on February 16, 1978 when she was assigned to clean the interior of Car 21171 on Track 7, Train 794. Neither Claimant nor her representative attended the hearing, despite proper notification and she was dismissed from service on March 22, 1978 for violating BN Safety Rules 667 and 673. These rules are referenced as follows:

Rule 667 - "Employees must comply with instructions from proper authority."

Rule 673 - "Employees must not sleep while on duty. Lying down, or in a slouched position, with eyes closed or with eyes covered or concealed will be considered as sleeping."

This disposition was appealed on the property and is now before this Division.

In reviewing the procedural objections raised by Claimant, we do not find that Carrier erred or manifested prejudicial bias when it administered the investigative hearing in an ex parte manner, since neither Claimant nor her surrogate representative appeared at the investigation. Admittedly, she notified the General Foreman of Cars on March 1, 1978 that she was under doctor's care and off sick, but did not request at any time, that the investigation be postponed. The hearing was held as scheduled, consistent with traditional practice and she was found guilty of violating the aforesaid rules. In Second Division Award 5987, involving a conceptually related case, we held in pertinent part:

"When Claimant failed to appear at the hearing ..., after having been properly served with notice, he acted at his peril; and Carrier's proceeding with the hearing in his absence was not a denial of due process."

We find this judicial principle applicable to the facts herein, since Claimant failed to request a timely postponement.

Similarly, we have carefully assessed the trial transcript and do not find that the hearing officer acted unfairly or conducted a questionable investigation. He was not estopped under these circumstances from receiving into the record only the testimony of Carrier witnesses, which in fact, was succinct and specific, or concluding from this evidence that Claimant violated Safety Rules 667 and 673. This was the third time that Claimant had been charged with sleeping while on duty and her past record of attendance and performance indicated a problematic employee. Her supervisor testified that he observed her sleeping on February 16, 1978 at about 1:30 P.M. and this was confirmed by a clerk, who was summoned to witness the infraction. We recognize, of course, that Claimant didn't appear at the investigation, but she was amply warned and sufficiently knowledgeable to understand that a scheduled investigation could be postponed. She made no visible or constructive attempt to postpone the March 7, 1978 hearing and such deportment when coupled with the serious charges cited and her deplorable work history, justified the penalty of dismissal. The Claimant was certainly mindful of the need to improve her work habits and attitudes and unfortunately she did not do so to her detriment. We will deny the claim.

A W A R D

Claim denied.

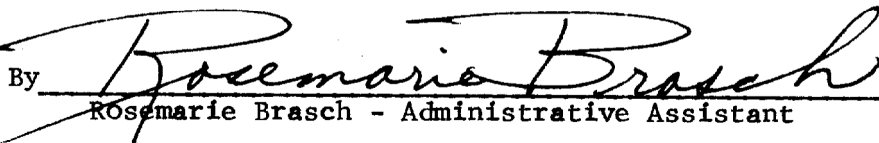
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Award No. 8439  
Docket No. 8363  
2-BNI-CM-'80

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 21st day of August, 1980.