

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 under the current Agreement Mr. G. S. Orrison, Carman, was arbitrarily, capriciously and unjustly dismissed on June 20, 1978, from the service of the Burlington Northern, Inc. at North Kansas City, Missouri.
2. That accordingly, the Burlington Northern Inc. be ordered to compensate the aforementioned carman eight (8) hours pay for each workday at the pro-rata rate commencing June 20, 1978, and continuing until he is reinstated to the Carrier's service; that seniority, job protection benefits, vacation and pass rights be unimpaired and all other benefits accruing employees in active 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 employes or employees 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 May 25, 1978 pursuant to Agreement Rule 35 to determine whether Claimant slept while on duty on May 6, 1978. Carrier found Claimant guilty of violating Burlington Northern Safety Rules 665 and 673 and dismissed him from service, effective June 20, 1978. This disposition was appealed on the property and is presently before this Division for appellate review.

In defense of his position Claimant contends that he was not afforded an investigative trial consistent with administrative due process procedures and that the foreman who alleged that he was sleeping while on duty were unqualified to determine under the specific circumstances of the situation, whether he was in fact asleep. Moreover, he argues that he was not apprised prior to the May 25 hearing that he was being charged with violating the aforementioned Rules.

In our review of this case, we find no evidence that Claimant was denied a fair investigation, since the record shows that he was clearly offered ample opportunity to present an effective rebuttal of the substantive specification. His contention that Carrier didn't delineate specific Rule violations does not impair the initial disciplinary notification since he was explicitly informed that the purpose of the investigation was to determine whether or not he slept while on duty on May 6, 1978. In Second Division Award 7936, we held on a similar procedural issue that:

"Under well established principles (e.g. Third Division Awards 12898, 20238 and 20285) we find that in this case the notice was precise and comprehensive enough to place Claimant on notice as to the matter under investigation."

We find this ruling applicable herein. The disciplinary notice stated that the investigation would specifically focus on whether he slept while on duty on May 6, 1978 and such language cannot be construed as cryptic or ambiguous. Claimant was implicitly charged with a serious offense that is grossly intolerable in the railroad industry. The record unmistakably shows that he was asleep at 2:35 A.M. when Foreman Maughan observed him in a somnambulant state in the One Spot Lunch Room for about three minutes, which was subsequently verified by Foreman Brown. Claimant did not offer any probative evidence that he was not in this condition, other than peremptory denials which are judicially insufficient in this instance. He was previously suspended for fifteen (15) days on September 30, 1977 and again suspended for thirty (30) days on January 19, 1978 for violating the same rules and committing the same offense. Under these disquieting circumstances, we are constrained by the magnitude of the offense and his recidivist deportment to affirm the dismissal. In Second Division Award 4629 which is conceptually on point herein, we held in pertinent part that:

"Sleeping while on duty is generally regarded as an offense which justifies discharge and, since the Claimant had only about three years service with the Carrier, the penalty of discharge cannot be considered excessive."

This decision is precedentially persuasive and we will deny the claim.

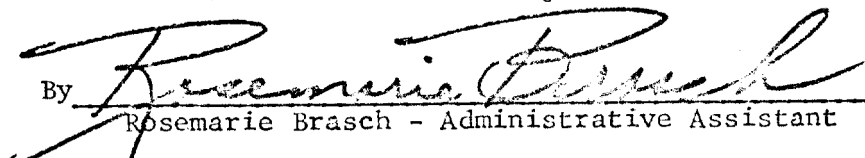
A W A R D

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 19th day of November, 1980.