

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Burlington Northern Inc.

Dispute: Claim of Employes:

1. That in violation of the current agreement, Laborer R. L. Hawkins was unjustly suspended and dismissed from service of the carrier following hearing held on date of July 7, 1978.
2. That accordingly, the carrier be ordered to make the aforementioned R. L. Hawkins whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired with compensation for all time lost plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare Insurance and Life Insurance Agreements during the time held out of service, and the mark removed from his record.

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, a laborer, had been in the carrier's employ for ten weeks when he was charged with two offenses: 1.) sleeping while on duty on July 2, 1978 at 7:05 a.m. and, 2.) exchanging assigned duties with another employe without permission on the July 1 - July 2, 1978 shift. As the result of the hearing held on July 27, 1978, the claimant was dismissed from service.

Most of the underlying facts are not disputed. At midnight on July 1, 1978, claimant was assigned to work in the freight pit. Instead of reporting to the freight pit, claimant operated the blue flag on the west switch. A fellow employe, originally assigned the blue flag duty, reported to work in the freight pit. Neither the claimant nor his fellow worker received permission to exchange their work assignments. Later in the shift, the claimant was observed in his personal truck. According to the Assistant Superintendent, claimant was slouching with his eyes closed. The claimant testified that he was fully awake and had taken refuge in the truck to avoid mosquitos. Claimant had not received permission to park his truck at the location where the Assistant Superintendent found him.

The organization contends that the carrier has failed to prove the charges with substantial evidence in the record. Alternatively, the organization argues that discipline is wholly inappropriate because it was common past practice at the yard for employes to park their personal vehicles at the switch. The carrier asserts the record is replete with evidence supporting a finding that claimant committed both offenses. Because sleeping is a serious offense, the carrier asserts that the dismissal is a reasonable penalty.

The transcript reveals that the claimant and his fellow employee both admitted that they agreed to exchange their assigned duties on the July 1 - July 2, 1978 shift without procuring the permission of any foreman. Carrier Rule 665 specifically prohibits employes from trading jobs without first obtaining the approval from the proper authority. Based on the above admissions, it is clear that claimant violated Rule 665.

Sleeping while on duty is forbidden under Carrier Rule 673. Rules 673 defines sleeping as, "... Lying down, or in a slouched position, with eyes closed or with eyes covered or concealed..." The Assistant Superintendent testified that he observed the claimant slouched in his truck with his feet up and eyes closed for two minutes. The Assistant Superintendent also testified that the door window was down and that he shouted at the claimant twice before obtaining his attention. The claimant denied that he was asleep but conceded he was in the truck. The only conflict concerns whether or not claimant was actually asleep. In this case, the carrier is justified in attaching greater weight to the testimony of the Assistant Superintendent. Rule 673 forbids employes not only from sleeping but also from assuming a posture which gives the appearance of sleeping. Here, claimant was in a comfortable position and even if he was not fully asleep he was certainly not alert or attending to his duties. Furthermore, because the truck window was open, claimant's testimony that he entered the truck to escape mosquitos is a paradox. Therefore, there is substantial evidence demonstrating that claimant violated Rule 673.

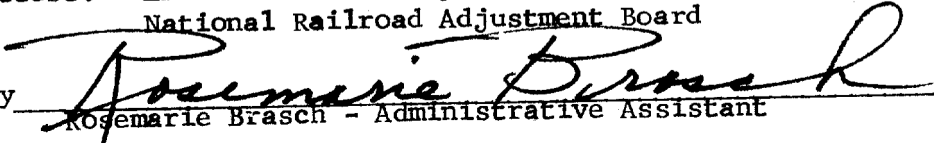
This Board has consistently ruled that sleeping is a serious offense which can justify dismissal. Second Division Award No. 8537 (Brown). On July 1 - July 2, 1978, claimant was performing an essential function at the West switch. He was in an area that is largely unsupervised. Under the circumstances, the carrier must rightly rely on its employes to vigilantly and alertly remain at their assigned place of duty. Second Division Award No. 8137 (Searce). While claimant's failure to obtain proper permission to exchange duties was a technical rule violation, when that infraction is coupled with the serious offense of sleeping, we see no reason for disturbing the carrier's judgment that dismissal was the appropriate penalty.

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 4th day of March, 1981.