

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer LaVerne Pederson, Minot, North Dakota, was unfairly dismissed from service of the Burlington Northern, Inc. effective July 31, 1979.
2. That accordingly, the Carrier be ordered to make LaVerne Pederson 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 lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare 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 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.

On July 31, 1979, the Claimant, a laborer, was dismissed from service for allegedly sleeping on duty, on June 28, 1979, and, therefore, for having failed to be alert and attentive and for having failed to have properly performed his duties.

At the investigation, held on July 12, 1979, the General Foreman testified that on June 28, 1979, at 5:00 A.M., he observed the Claimant slouched over in a chair in the Caboose Service Building with his head resting on his shoulder. Though the Claimant told this Foreman that he was on a lunch break the Foreman found that the cabooses had not been cleaned even though Claimant had at first said that he had cleaned two of them. After the Foreman's inspection Claimant admitted he had, indeed, not cleaned them. The Foreman also asserted that since the Claimant hadn't yet done his work he could not have properly been on his lunch break since it was understood that an employee's work was to be completed before the lunch break could be taken. The Claimant admitted that he was not "alert" at the time that the General Foreman encountered him on the morning of June 28th and that he had, in fact, been sleeping.

The testimony of the Foreman and the admissions of the Claimant indicate that the Claimant was in clear violation of Rule 665 and of Rule 673. Even if the Claimant had been on his lunch break there is authority to the effect that sleeping is not permitted during eating periods. (See Award No. 8100, Second Division, which found that sleeping on the job is inappropriate, even during lunch break.) It is also interesting to note that at the Investigative Hearing, in the course of explaining his actions, Claimant did not assert he was on his lunch break when awakened by the General Foreman.

Neither does the fact that Claimant was not working his regular shift justify sleeping on the job. The Claimant admits that he was notified on June 25, 1979 that he would be working the morning shift (not his regular shift) on June 28, 1979. Employees must sometimes work shifts other than their normal ones and as long as they have appropriate notice, so that provisions for proper rest can be made, sleeping on the job cannot be justified. Additionally, if the Claimant was too tired to work it was his responsibility to explain the situation and ask for the day off.

The record provides substantial evidence to warrant Carrier's action, and support its findings as well as the discipline administered. This Board has consistently adhered to the doctrine that a disciplinary determination based on substantial evidence will not be disturbed unless the judgment of the Carrier was arbitrary or capricious. Here the Board can find no reason to substitute its judgment for that of the Carrier. It has been consistently held that sleeping while on duty is a dismissable offense.

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 27th day of January, 1982.