

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
(  
( Burlington Northern Railroad Company

Dispute: Claim of Employee:

1. That in violation of the current agreement Electrician G. L. Shepard was unjustly dismissed from the Burlington Northern, Inc. on August 1, 1979 following investigation on July 5, 1979.
2. That in further violation the Burlington Northern, Inc. failed to furnish copy of discipline notice and transcript to both Electrician G. L. Shepard and the duly authorized representative as provided for in Rule 35 of the controlling agreement.
3. That accordingly the Burlington Northern, Inc. be ordered to make the aforementioned Electrician G. L. Shepard whole by restoring him to service with seniority rights unimpaired, plus restoration of all holiday, vacation health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages beginning on the date of August 1, 1979.

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.

Under date of June 22, 1979, Electrician Shepard was cited to attend formal investigation on July 5, 1979, "for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged sleeping while on duty at approximately 4:50 a.m., June 22, 1979 while employed as an electrician at Lincoln Diesel Shop, Lincoln, Nebraska." Investigation was held as scheduled, and on August 1, following Claimant was notified that he was discharged for violation of Rule 673 of the Burlington Northern Safety Rules. Such rule reads as follows:

"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."

Claimant was assigned to work from midnight to 8:00 AM, with a lunch period from 4:00 to 4:20. Two foremen, J. P. Jackson and J. J. Benallo, testified that they observed Mr. Shepard at about 4:50 AM lying across the seat of a diesel unit with his eyes closed and that Foreman Jackson shined his flashlight in Claimant's eyes without waking him. Indeed, Claimant readily admitted that he was asleep but attempted to justify his action by stating that he had gone to sleep during his lunch period and overslept. Claimant testified that at times employees took naps during the lunch period with the understanding that a buddy would wake them up. Foreman Benallo testified that no discipline had been assessed for employees napping during their lunch period.

Nevertheless, there is no showing that Carrier has sanctioned oversleeping, and we hold that an employee who sleeps during his lunch period does so at his peril. Lunch periods are for partaking of nourishment and not catching up on sleep. Clearly, Mr. Shepard violated Rule 673.

We now turn to the Organization's contention relative to procedural error. Rule 35 provides that an employee will be given written notice of discipline with copy to local organization's representative and that both such parties shall be furnished a copy of the transcript of investigation within 30 days. The contention was raised for the first time in the appeal to this Board that Carrier failed to send Claimant's local representative a copy of the notice of discipline and also failed to furnish such representative a copy of the transcript within 30 days. There is no record of such contention in the handling on the property, and we hold that the issue is untimely at this stage of the proceedings. Moreover, there is no showing of harm to Claimant. He and his representative had, and availed themselves of, the use of a transcript and were most certainly aware of the disciplinary action taken.

Finally, the Organization challenges the discipline as arbitrary and unreasonable. The point is made that Claimant was not suspended pending investigation and that he would have been suspended had the offense been serious. We reject this argument as without merit.

We find that the investigation was fairly and properly conducted and that the discipline assessed was reasonable.

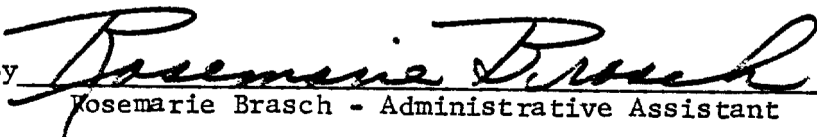
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of July, 1982.