

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

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Burlington Northern Railroad Company (former SLSF)

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Mr. E. E. Mayer, Electrician, Burlington Northern Inc., (former St. Louis-San Francisco Ry. Co.) was unjustly suspended from Carrier service from December 19, 1979 and continuing through January 1, 1980.
2. That in further violation of the Agreement, the Burlington Northern Inc., failed to afford Claimant a fair and impartial hearing and thus stands procedurally defective in this claim.
3. That accordingly, the Burlington Northern Inc., be ordered to make the aforementioned E. E. Mayer whole by compensating him for all time lost account this unjust suspension, this to include pay for attending the investigation (December 11, 1979) holiday pay for dates of December 24, and 25, 1979 and January 1, 1980. Claim also to include restoration of all seniority rights, vacation time, health and welfare benefits, pass privileges and all other rights, benefits or privileges that he is entitled to under rules, agreements, custom or law and the record of the unjust suspension be removed from the 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.

This matter involves an absence on December 3, 1979, for which the Claimant was found at fault by reason of not securing permission, thereby failing to protect his assignment. A fourteen (14) day suspension was issued following investigation on December 11, 1979.

The basic facts of the December 3, 1979 incident are not in dispute. Claimant had been warned on several prior occasions by supervisors concerning his attendance problems. Based on the facts developed at the investigation, there could be no doubt that Claimant did not report for duty as required at

7:30 a.m. on December 3, 1979, and Claimant admits that he did not notify any carrier officer that he would be absent until sometime after 1:00 p.m. on the date of the incident when he personally arrived at work. According to the testimony of the foreman, Claimant never received permission to lay off on that date.

It is the position of the Organization that Claimant had been out of town over the weekend, encountered car trouble, got in at 5:00 a.m. Monday morning and slept through his alarm. Therefore, the Organization argues that these reasons fall into the category of "unexpected instances" and that Claimant complied with the requirements of Rule 22 of the Controlling Agreement when he did come into work to explain what happened "as soon as possible".

The Organization raised three procedural issues in support of its argument that Claimant was denied a fair and impartial investigation, to wit:

- (1) that the carrier officer who preferred the charges also assessed the penalty and heard the appeal, and the multiplicity of roles constituted a denial of a fair hearing;
- (2) the hearing officer prejudged the case as evidenced by a letter sent to Claimant by the hearing officer one day prior to the notice of investigation and concerning Claimant's attendance problems; and
- (3) the notice to appear for investigation was not a precise charge as required by the terms of Rule 35 of the Controlling Agreement.

None of these contentions are in our judgment meritorious in this case, since all three procedural contentions were raised de novo before our Board but never joined on the property.

On the merits, the Board is satisfied that the Claimant was at fault by reason of not securing permission and the excuse offered by Claimant was not good cause for being absent from work. Numerous prior awards of this Board have set forth the principle that absence because of oversleeping or the excuse of sleeping through the alarm were not justifiable reasons for failing to protect assignment. (See Second Division Awards 4165, 7067 and 8411). As noted by Referee Daly "the oversleeping excuse also fails to support the Claimant's position, because neither the alarm clock's nor the Claimant's failures could be placed in the 'good cause' category ...".

Likewise, under the circumstances of the instant matter, nothing in the record leads this Board to the conclusion that discipline assessed was arbitrary, capricious, discriminatory or excessive.

A W A R D

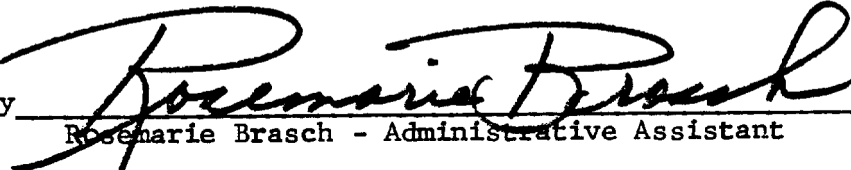
Claim denied.

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Award No. 9375
Docket No. 9308
2-BN-EW-'83

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 2nd day of February, 1983.