

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Electrician Apprentice D. A. Cellarius was unjustly dismissed from service of the Burlington Northern Inc., on August 13, 1980 following investigation on July 22, 1980.
2. That the Burlington Northern Inc., further failed in their charged duty to seek out, produce and develop all the facts pertaining to the incident in question, and in addition, failed to meet their burden of proof.
3. That accordingly, the Burlington Northern Inc., be ordered to restore Mr. Cellarius to service with seniority unimpaired, compensate him for all time lost, together with restoration of, or compensation for, lost vacation time, holidays, hospitalization benefits, railroad retirement benefits and all other benefits, rights and privileges to which he is entitled under prevailing Schedules, Rules, Agreements, or Law. Claim to begin on date Electrician Apprentice D. A. Cellarius was unjustly dismissed from service and to continue until adjusted.

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.

The Claimant is an electrician apprentice at the Carrier's Alliance, Nebraska, facility with six months seniority. He was charged with sleeping on duty, and an investigation was held on July 22, 1980. Following the investigation, he was dismissed from service effective August 13, 1980.

The Organization views the Carrier's action as arbitrary and an abuse of managerial discretion because the charge is not supported by the evidence. This position is, according to the Organization, upheld by the fact that Claimant was not held out of service pending investigation as provided in Rule 35 (b). The

Organization states that had the Carrier considered the infraction to be of a serious nature, it would have withheld Claimant's services. The Organization asserts that this Board has held that dismissal for a minor offense is excessive discipline and often set aside.

The Claimant's dismissal by Carrier was for violation of Safety Rules 665 and 673 in that he was observed sitting in a slouched position with his eyes closed in the cab of Unit 5938 at approximately 6:30 A.M. on July 10, 1980.

Rules 665 and 673 read as follows:

"Rule 665: Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty."

"Rule 673: 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."

The record discloses that at about 6:30 A.M., July 10, 1980, the mechanical foreman crossed through the cab of Unit 5938 and observed the Claimant and an electrician, who was in charge of him. Both men were awake. A few minutes later, the electrician came out of the cab. Approximately five or ten minutes later, the mechanical foreman reentered the cab to check on the oil pressure and observed Claimant reclining, his feet up near the engineer's side with his arms folded and eye lids closed. After observing Claimant for a minute, the mechanical foreman kicked the back of the cab seat. Claimant, at that point, acknowledged the foreman's presence. The Claimant's testimony basically acknowledged these facts except he denied he was sleeping or had his eyes closed. He also acknowledged he had been at Unit 5938 with the electrician for three hours and that he was tired and not very alert.

This Board notes that Rule 673 alerts employees that lying down or assuming a slouched position with eyes closed or covered will be considered sleeping. The testimony of Claimant did not dispute the foreman's observations. The Hearing Officer credited the testimony of the mechanical foreman. It is not our function to question the propriety of his resolution of that credibility issue.

Lastly, the Board notes the Organization's contentions that the Carrier did not consider the infraction to be of a serious nature in that Claimant was not withheld from service. This is not considered to be a meritorious argument. This short term employee placed himself in a position whereby he could be considered to be sleeping. We shall not disturb the Carrier's action.

A W A R D

Claim denied.

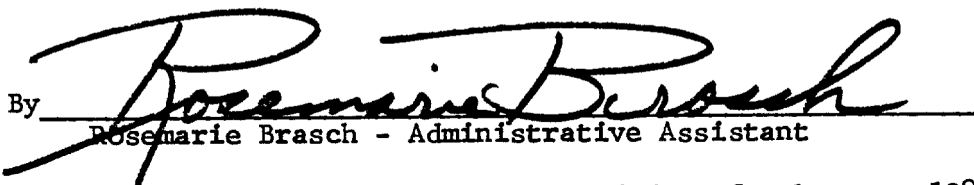
Form 1
Page 3

Award No. 9386
Docket No. 9434
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.