

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

Dispute: Claim of Employees:

1. That in violation of the current Agreement Electrician C. W. Huschka was unjustly suspended and dismissed from service of the Burlington Northern Railroad by notice dated May 17, 1982 withholding him from service and following investigation held May 26, 1982.

2. That accordingly, the Burlington Northern Railroad be ordered to make Electrician C. W. Hucshka whole by restoring him to its service with seniority rights unimpaired, plus restoration of or compensation for all rights or benefits he is entitled to under the agreement including compensation for all lost wages beginning May 17, 1982.

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 employes 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 C. W. Huschka, an Electrician, had been in service of the Carrier for over four years at the time the incident under consideration occurred. On May 17, 1982, the Carrier sent a notice to Claimant to report for an investigation to ascertain the facts and his responsibility, if any, with respect to a charge of sleeping on duty on May 16, 1982. After investigation the Claimant was informed by notice dated June 7, 1982 that he had been found guilty as charged and that he was dismissed from service.

In the case as developed on property several procedural issues were raised by the Organization, including the failure to specifically cite the rule violated and the multiplicity of the hearing officer's roles. With respect to the failure to specifically cite the rule number on sleeping, this Board finds that the Claimant was fully appraised of the charge against him and finds no violation of contract provisions (Third Division Award 23997). With respect to the Carrier's Investigating Officer issuing the charge, conducting the investigation and determining discipline, this Board has ruled many times that this, in and of itself, is not a violation of the Claimant's rights (see Second Division Awards 8272, 8367 and 9405). A complete review of the entire record in this case demonstrates that the Claimant was afforded a fair and impartial investigation as required by the governing rules.

As to the charge of sleeping on duty, this Board finds that the allegation is fully supported by the testimony of witnesses and the Claimant's own response. A thorough review of the testimony leaves no doubt that the Claimant violated the Carrier's rules of safety and specifically Rule 569, which prohibits sleeping on duty and states in part:

"Lying down, or in a slouched position, with eyes closed or with eyes covered or concealed will be considered as sleeping."

The evidence of record in the instant case provides documentation by two witnesses and the Claimant's own testimony that he was in a slouched position, with his hat pulled over his eyes, in the engineer's cab seat of unit 6717 on the morning of May 16, 1982. The preponderance of evidence substantiates that the Claimant was sleeping.

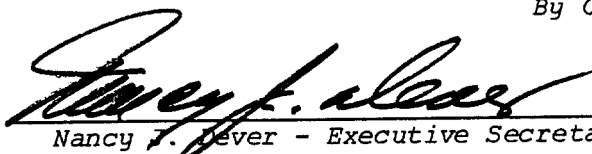
The only issue, therefore, before this Board is the determination of whether the discipline assessed was reasonable. The Organization has made a strong argument that Claimant had been an excellent Electrician and now suffered from alcoholism. Even further, the Organization argued that the Claimant was presently under treatment for alcoholism, and that his drug problem was directly related to the "sleeping" incident at bar. This Board is certainly mindful that such conditions as alcoholism may prove to mitigate the circumstances and role of discipline. However, in the present case, as handled on property, the Chief Mechanical Officer in a letter of November 12, 1982 pointed out that the Claimant had been disciplined for the same offense within the year. Sleeping while on duty is a dismissable offense (see Second Division Awards 8896, 9386, 9712, 9993, 10001) and this being the Claimant's second episode, this Board cannot find the discipline assessed by the Carrier unjust, capricious or arbitrary. This is consistent with a similar Award under circumstances also involving alcohol (see Second Division Award 8636). This Board shall not disturb the Carrier's action in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 6th day of March 1985.