

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11529
Docket No. 11476
88-2-87-2-125

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Electrician Helper K. D. Machholz was unjustly suspended from the service of the Burlington Northern Railroad following an unfair investigation held on July 2, 1986.

2. That the Burlington Northern Railroad was procedurally defective when it arbitrarily extended the assessed sixty (60) Day suspension to cover a period of eighty-four (84) days.

3. That accordingly, the Burlington Northern Railroad be instructed to make Electrician Helper Machholz whole per Rules 35(g); compensate him for all wages lost during the suspended period of July 14 through October 6, 1986; that he retain all vacation and seniority rights, health, welfare insurance and all other benefits he would have earned during the suspended period plus removal of all record of his investigation and assessed discipline from Electrician Helper Machholz's personal 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 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 was notified on June 16, 1986 to attend an Investigation on an allegation that he was sleeping on that date. The Investigation was held on July 2, 1986. On July 14, 1986, Claimant was notified that he was suspended for sixty days - from July 14, 1986 thru October 6, 1986.

The Organization appeals the discipline assessed on several basis. First it argues that the Hearing was not conducted in a fair and impartial manner as required by the terms of the controlling Agreement. Additionally, it disputes that adequate evidence was developed to establish that the Claimant was guilty of the charge. With regard to the discipline imposed, the Organization argues, that it was arbitrarily expanded to an 84 days suspension.

From our review of the Investigation transcript we are unable to accept the notion that the Hearing was not conducted in a fair and impartial manner so as to prejudice Claimant's rights under the Agreement. Both the Claimant and his Representative were afforded full opportunity to question all principals and witnesses and at the conclusion, when asked, were unable to offer advice on anything that had not been covered.

It is also our view that adequate evidence was developed to establish that Claimant was sleeping while on duty. Two witnesses testified that they observed Claimant sleeping at a time when he was on duty. Their testimony is unimpeached. In fact careful reading of the transcript supports a conclusion that Claimant tacitly admitted that he had been sleeping at the time. On one occasion he indicated that he was in a reclining position because he was on a lunch break, (which was not factual), and on another he stated, in mitigation, that he had not billed (turned in a time card) the Carrier for the day.

On the matter of the length of the suspension we note that the original discipline stated:

"...you are hereby notified that you are suspended from the service of the Burlington Northern Railroad for a period of 60 days effective 11:01 P.M., July 14, 1986 thru 11:00 PM October 6, 1986, ..."

The calendar days covered between July 14, 1986 and October 6, 1986 are 84 while the work days total 60. The specificity of the suspension notices leaves no doubt that it was intended that the discipline be 60 work days. The contention that a 60 day suspension was improperly extended to 84 days must be rejected.

Finally, we do not find the level of discipline administered here to be excessive. A number of Awards have been cited, to us from this property, wherein employees found sleeping on duty have been terminated.

A W A R D

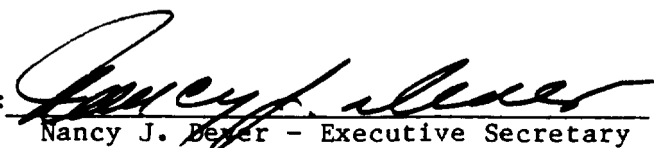
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1988.