

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

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

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Electrician W. J. Barnes was unjustly suspended from the service of the Burlington Northern Railroad for a period of 30 days and a letter of censure was placed on his record following an investigation held on December 6, 1988.

2. That the investigation held on December 6, 1988 was not fair and impartial as required by the Rules of the current Agreement.

3. That the discipline assessed was unwarranted in view of the facts developed during the investigation.

4. That accordingly, the Burlington Northern Railroad should be directed to make W. J. Barnes whole by restoring him to service with seniority rights unimpaired, restore all other rights, benefits or privileges which he was denied during his suspension and to compensate him 8 hours per day for each day he is withheld from Carrier Service; starting date of claim is December 20, 1988 and it also includes removal of the entry of censure from Mr. Barnes' 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.

As the result of an Investigation held on December 6 and 19, 1988 the Claimant was suspended for thirty days for violation of Safety Rules and General Rules 569 in connection with his sleeping on the job on November 28, 1988.

Rule 569 provides that employees must not sleep while on duty and that lying down or in a slouched position with eyes closed or with eyes covered or concealed will be considered as sleeping. The Board agrees with the Hearing Officer's findings that the Carrier established and the Claimant admitted that he was in a slouched position. In this regard, the Board finds that the Carrier met its burden of proof in establishing that the Claimant was in violation of Carrier's Safety Rule 569. Further, the Board rejects the Organizations' Claim that the Claimant's rights were prejudiced by the fact that the Investigating Officer obtained pre-investigation information. A review of Rule 35 discloses that nothing precludes such conduct. To the contrary, pre-investigation by Carrier officials may determine that the holding of an Investigation is unnecessary and can be useful in preventing the Carrier or the Organization from going on a "fishing expedition" at the Investigation. Further, a careful reading of the transcript does not disclose prejudicial conduct on behalf of the Hearing Officer nor does it disclose his predisposition of this matter.


The Board notes that the record discloses that the Claimant was fully aware of the Rule that he was charged in violating and admitted a violation of a part of that Rule. Noting that numerous Awards of this Division have declared that a violation of this Rule is a serious infraction justifying dismissal, this Board concludes that the disposition of discipline was proper and that the discipline assessed was not excessive. Nothing in the record compels this Board to substitute its judgment for that of the Carrier and nothing in the record indicates that the Claimant was deprived of Agreement due process.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1991.