

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12489
Docket No. 12129
92-2-90-2-261

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
(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM:

"1. That the Chicago & North Western violated the current Agreement effective December 1, 1985, specifically Rule 26, when they arbitrarily disqualified Mechanic in Charge Larry Spencer from service on May 22, 1989.

2. The investigation afforded Mechanic in Charge Larry Spencer, Butler, Wisconsin was unfair and improperly conducted. That the Carrier failed to comply with the procedural requirements of Rules: 26(a), (b), (d), (h) and (k). That the discipline administered (disqualification) was unjustly assessed.

3. That Mechanic's in Charge are protected under the current schedule of Rules and Agreements and that Appendix "F" memorandum of Agreement covering understanding in respect to Application of Rule 29, Federated Crafts, Agreement, in no way removes the position of Mechanic in Charge from the protection afforded in our current Agreement, Appendix "F" affects Rule 29 alone, nor are their rights of due process waived therein as the Carrier contends by both letter and in conference held December 18, 1989.

4. That the Chicago and North Western Transportation Company reinstate Mr. Spencer to service and make him whole for all wages and benefits lost account this most unjust and arbitrary action of the Carrier."

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.

On May 18, 1989, while assigned as a Mechanic-in-Charge (MIC) at Butler Yard, Claimant was alleged to have been observed by a Carrier Special Agent laying down on the seat of his vehicle for approximately 25 minutes at about 10:30 P.M. When confronted by the Special Agent, Claimant is alleged to have admitted that he parked his vehicle at the north end of the diesel house because he was tired and laid down on the seat. On May 22, when shown a copy of Special Agent's report, Claimant allegedly indicated to his Supervisor that the report was correct. Three days later, Carrier claims, he made the same admission to its Motive Power Superintendent, and, further that he knew that it was against Company Rules to lay down and assume the position of sleep while on duty. Claimant was disqualified as a MIC because "he could not be trusted to work independently."

Three weeks after the incident Claimant challenged the assertions made by the Special Agent, contending that he was lying, and demanded a formal investigation. This was followed by an appeal from the Organization seeking a hearing under Rule 27 (not necessarily a formal investigation). This was held on June 30, 1989. On August 15, 1989, the disqualification was reviewed and upheld.

Seven months after the incident, and four months after the disqualification was reviewed and upheld, the Organization filed the claim being reviewed here, asserting multiple violations of Rule 26. Carrier defended on the grounds that the disqualification of Claimant was not handled as a disciplinary matter. Under the Agreement it had license to appoint and remove MICs without hearing and investigation and had disqualified MICs in the past.

Notwithstanding Claimant's assertions to the contrary, the record establishes that he was indeed observed laying down in his vehicle with his eyes closed while the vehicle was parked at a location where he would not normally be expected to be parked at a time when he was on duty. This conduct is sufficient to question his qualifications for continued assignment to the appointed position of MIC. Carrier did not violate the Agreement when it effected Claimant's disqualification. The Claim is without merit, it will be denied.

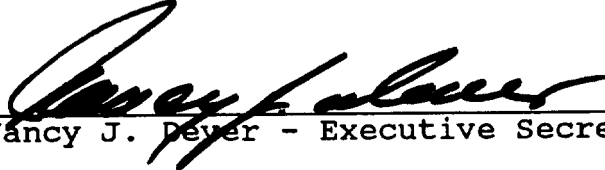
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1992.