

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13657

Docket No. 13544

01-2-00-2-24

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Brotherhood of Electrical Workers
(System Council #16)

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad)

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rule 35 in particular, Crane Operator R. L. Boone was unjustly suspended for a period of thirty days and placed on probation for a period of three years by the Burlington Northern/Santa Fe Railroad Company following an investigation held on July 15, 1998.
2. That the investigation held on July 15, 1998, was not a fair and impartial investigation under the terms required by the rules of the current Agreement and that the issuance of the thirty-day suspension and the three-year probationary period was unjust, excessive and unwarranted.
3. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to make Crane Operator R. L. Boone whole for all lost wages, rights and benefits which were adversely affected by the discipline and that all record of this matter be removed from R. L. Boone’s 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

As a result of an Investigation, the Claimant, a Crane Operator at the Carrier's West Burlington Shop, received a 30 day suspension for sleeping and was further placed on probation for three years.

The record shows that on June 29, 1998, while the Claimant was working an overtime assignment, Shop Systems Administrator D. Arbogast observed the Claimant through the window of a door of the traction motor bearing room. According to Arbogast testimony:

"A. As I approached the traction motor bearing room I saw that the lights were out. I walked up to the east door, which I found to be locked. Also the east door appeared to be locked with boxes, pardon me, locked with boxes from the inside. I decided to try the west door. As I was unlocking the west door, I noticed Ronald Boone was inside, in a chair, with his eyes closed sitting near the plastic draped curtain by the conveyer. As I opened the west door, Ronald Boone stood up, startled, and hastily exited the traction motor bearing room through the draped curtain by the conveyer.

* * *

... I saw Mr. Boone ... in a chair completely motionless.

* * *

[s]itting in a chair slightly leaned back, arms down to his side, head tilted a little back. ..."

The Claimant testified that he was not sleeping; he was in the room to make a call to his family as a result of a severe storm; the phones were not working; and, at the time he was noticed by Arbogast, the Claimant had his head bowed and was praying.

Rule S-28.11 provides:

“Employees must not sleep while on duty. Employees reclined with their eyes closed will be in violation of this rule.”

Substantial evidence supports the Carrier’s determination that the Claimant engaged in misconduct. Shop Systems Administrator Arbogast’s testimony sufficiently establishes that the Claimant was sleeping in violation of Rule S-28.11. The fact that Arbogast observed the Claimant sitting motionless with his eyes closed, arms down to his side and head tilted back and the Claimant’s startled reaction upon Arbogast’s entry into the room sufficiently establishes on a substantial evidence basis that the Claimant was sleeping as charged.

The Organization’s arguments attacking Arbogast’s testimony are essentially assertions that the Claimant should have been credited over Arbogast. Unless there is clear reason to do so demonstrated by the record, it is not the function of the Board to overturn credibility resolutions made as a result of the Investigation. The Board does not have the opportunity to view the witnesses - the Investigating Officer does. We find no reason in this record to overturn that credibility determination which was adverse to the Claimant.

With respect to the amount of discipline imposed, we do not find a 30 day suspension and probation to be arbitrary. Sleeping on the job is a serious offense. Moreover, the purpose of discipline is to rehabilitate an employee by sending a corrective message to the employee that he must comply with the Carrier’s Rules. While it could be argued that a 30 day suspension and probation were severe, the fact that the Claimant was unwilling to acknowledge his misconduct required the imposition of a strong disciplinary action sending the appropriate message.

We have also considered the Organization’s procedural argument that the Claimant was not given specific charges as required by Rule 35 (“The notice must specify the precise charge for which investigation is being held. . .”). The notice states that the Investigation would be “. . . for determining responsibility in connection with

your alleged sleeping while on duty on or about 6:50 P.M. on June 29, 1998. . . .” The Claimant was sufficiently apprised of the charged misconduct within the meaning of Rule 35.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of December, 2001.