

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

Parties to Dispute: { System Federation No. 7, Railway Employees'
Department, A. F. of L. - C. I. O.
(Electrical Workers)
{ Burlington Northern Inc.

Dispute: Claim of Employee:

1. That in violation of the current working agreement, traveling Electrician R. C. Frey, headquartered at Havre, Montana, was unjustly suspended from the service of Burlington Northern Inc., from August 29, 1977 to September 7, 1977, inclusive, in addition to having an entry of censure unjustly made on his personal record.
2. That accordingly, Burlington Northern Inc., be ordered to remove the entry of censure made on the record of Mr. Frey and compensate him for all time lost, restore any lost vacation time, railroad retirement benefits, holidays, sick days or hospitalization benefits and any other rights, privileges or benefits to which he may be entitled under schedules, agreements or laws.

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.

This Board has carefully reviewed claimant's procedural arguments regarding the course of conduct of the August 3, 1977 investigative hearing, which led to the ten (10) days suspension and entry of censure penalty.

While we agree that an explicit finding of carrier manifested bias would create reversible error, we do not find this condition present.

The record does not show that the hearing officer was prejudicial, despite his multiple roles in this case. He did not serve as a witness at the hearing which investigated this incident or visibly act in an impermissible manner.

We recognize the litany of cases on this procedural question and agree that at times, we reversed carrier disciplinary determination for improper observance of due process requirements, but this is not the situation here.

Claimant was afforded an investigative hearing that comported with the essentials of administrative due process. The same is true regarding his assertion that the Notice of Hearing was defective. Admittedly, it is important for the defending party to be apprised of the proffered charges, but the notice in this instance was not ambiguous or unintelligible to preclude the preparation of an adequate and sound defense. Claimant was under a procedural obligation to protest the omission of specific data in the notice at the time of the proceeding or perhaps more importantly at the time he was first notified of the investigative action. His post hearing averments do not cure this waiver.

Claimant acknowledged that he violated Carrier Rules 665 and 667 and the investigative transcript confirms this admission. The record shows that he was fully aware of the electrical trouble on Train No. 8 and that he was instructed to meet this train at Whitefish, Montana on July 28, 1977. It was singularly his responsibility to comply with this directive that morning and the fact that he didn't because, he overslept cannot be attributed to carrier's fault.

The imposed penalty was neither arbitrary or capricious, under the precise circumstances of this dispute, or an abuse of managerial discretion. We will reject the claim.

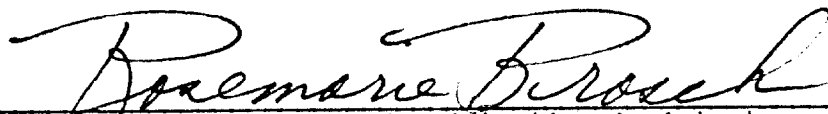
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of September, 1979.