

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Toledo, Peoria and Western Railroad Company

Dispute: Claim of Employees:

1. That the Toledo, Peoria and Western Railroad Company, as a result of a formal investigation held on May 16, 1980, unjustly assessed Electrician Paul E. Burk twenty (20) days suspension, ten (10) days of which will be a record suspension. Record suspension from June 26, 1980 through July 5, 1980 and actual suspension from service July 6 through July 15, 1980.
2. That accordingly, Electrician Paul E. Burk be compensated for all wages lost from July 6 through July 15, 1980, both dates inclusive his personal record be cleared, and any loss of vacation pay, and all his vacation and health and welfare benefits be reinstated as of July 6, 1980.

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 waived right of appearance at hearing thereon.

Claimant, Mr. P. E. Burk is a regularly assigned electrician in the employ of the Toledo, Peoria and Western Railroad Company at East Peoria, Illinois. On March 24, 1980 Claimant was notified to appear for formal investigation on April 1, 1980 which investigation, after postponement(s) requested by Organization, was held on May 16, 1980. Claimant was charged with violation of Carrier General Rule Q on March 18, 1980. As a result of the formal investigation Claimant was found guilty as charged by Carrier and was notified by letter dated May 21, 1980 that he was assessed discipline of thirty (30) days suspension from service. On June 11, 1980, in a letter to the Local Chairman of the IBEW, Tremont, Illinois the Manager of Personnel of the Carrier gave notice that the thirty (30) day suspension assessed Claimant was being reduced to a twenty (20) day suspension, ten (10) days of which were to be actual, and ten (10) days of which were to be recorded "... due to this being the first discipline assessed against Mr. Burk...".

An analysis by the Board of the investigation transcript shows that the Carrier met the test of substantial evidence. Both the Chief Mechanical Officer (CMO) Monemaker and the third shift roundhouse Foreman (Planner-Scheduler) Miller testified that they saw Claimant at approximately 4 A.M. on March 18, 1980 in the roundhouse leaning back in a chair with his eyes closed and his mouth open. At this point the CMO allegedly woke Claimant and advised him to start working. Strong corroborating evidence to the truthfulness of this order of events, in the mind of the Board, is the testimony of additional witnesses i.e. Hostler Helper Sturdivant and Laborer Clark to the effect that they saw Claimant in approximately the same position in the roundhouse with eyes closed at about 3:45 A.M. That Claimant may have been asleep on his lunch break as Organization attests which was never, in fact, fully established during the hearing has no bearing on the relationship between the Claimant's contravention of Rule Q and the discipline assessed by Carrier. This Board has held, in past awards (See Second Division Awards 8100 and 8886) that paid lunch break or eating time is company time and the Board will not disturb this established tradition in this instance.

Organization's contention that the discipline ultimately assessed Claimant, which was a twenty (20) day suspension divided between actual and recorded days as noted earlier, was unduly harsh is rejected by the Board. A host of awards of this and other divisions of the Board declare that sleeping while on assignment is an offense for which an employee may even be discharged from service (See inter alia Second Division Award 8537; Third Division Awards 21241 and 22027).

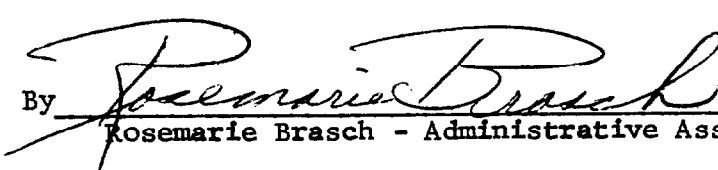
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1982.