

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(System Council #11, AFL-CIO
(Burlington Northern Railroad, Inc.

Dispute: Claim of Employees:

1. That Mr. H. T. Sell was unjustly suspended from the service of the Burlington Northern, Inc. from September 23, 1981, to October 12, 1981.

2. That accordingly, the Burlington Northern, Inc. compensate Mr. H. T. Sell accordingly -

(a) compensation for all lost time

(b) make whole all vacation rights, if affected by this suspension.

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 employees 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. H. T. Sell, a midnight-shift Fuelman/Bob Cat Operator at Carrier's Diesel Shop Service Track in Springfield, Missouri, was charged with sleeping while on duty on August 30, 1981, in violation of Rules D and E of the Carrier's Rules, Regulations, Safety Rules, and Instructions for Mechanical Department Employees.

Rule D states:

"Employees who are negligent or indifferent to duty... will be subject to discipline."

Rule E states:

"...Employees must not sleep while on duty. Lying down, or in a slouched position, with eyes closed or with eyes covered or concealed will be considered as sleeping."

Following an investigation on the property, held on September 14, 1981, Claimant was found guilty as charged and received a 20-day suspension from September 23, 1981, until October 12, 1981.

The Organization's position is that the suspension was arbitrary, abusive, and discriminatory. The Organization contends that Claimant had performed all assigned duties prior to falling asleep "momentarily." Also, the Organization contends that the Claimant's supervisor was out to harass and antagonize the Claimant.

The Carrier's position regarding the merits of this claim is that the Claimant's violation of Rules D and E, cited above, was supported not only by substantial evidence presented at the investigation but by Claimant's own admissions. Moreover, two supervisors, Foreman O.I. Claspill and Foreman Glen Scranton, observed the Claimant sleeping. Foreman Claspill woke him up. Moreover, the Claimant admitted to his foreman that he had been sleeping when he was awakened.

Thus, the Carrier argues that the Organization has failed to demonstrate that the Carrier acted arbitrarily or capriciously when it found that Claimant had violated the rules in question and took the action of suspending the Claimant for 20 days.

This Board finds that the discipline assessed should stand. It has been consistently held that sleeping while on duty is a dismissable offense. (See Awards 8886, 9260, and 9712.) In his testimony, Claimant admitted that he was asleep at approximately 4:10 a.m. on August 30, 1981. Thus, Claimant, himself, has admitted that he violated Rules D and E. Moreover, the Carrier has two eyewitnesses to the event.

The record provides substantial evidence to warrant Carrier's action and to support its findings as well as the discipline administered. This Board has consistently adhered to the doctrine that a disciplinary determination based on substantial evidence will not be disturbed unless the judgment of the Carrier was arbitrary or capricious. In this case, the Board cannot find any reason to substitute its judgment for that of the Carrier. In many cases, sleeping on the job is a dismissable offense. The Carrier has exercised leniency in this matter, and this Board will not set the Carrier's finding aside.

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 18th day of July 1984.