

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Carrier's action in dismissing Laborer H. N. Hopkins from its service on March 29, 1982, was indeed harsh, out of proportion, excessive and constituted an abuse of managerial discretion.
2. That accordingly, the Burlington-Northern, Inc. restore Laborer H. N. Hopkins to service-
 - (a) With his seniority rights unimpaired;
 - (b) Compensation for all time lost;
 - (c) Make whole for all vacation rights;
 - (d) Pay premiums (or hospital dues) for hospital, surgical and medical benefits for all time held out of service;
 - (e) Pay premium for his group life insurance for all time held out of service.

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.

As a result of a formal hearing held on March 23, 1982, the Claimant, a Laborer, was dismissed from service for sleeping on duty which constitutes a violation of Safety Rule 569. Safety Rule 569 provides:

"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."

The record warrants the conclusion that on March 15, 1982 at 6:00 a.m., during a routine tour of the shops, Foreman Scranton and Assistant General Foreman Ward came across the Claimant lying between two (2) cab seats of a locomotive with his eyes closed. The Claimant admitted that he "had been" sleeping, but not

when the two (2) Carrier Supervisors came into the cab. The Board concludes that the Claimant violated Safety Rule 569.

During his five (5) years of employment the Claimant has received numerous letters from various supervisors concerning his poor work habits and on three (3) occasions he has received disciplinary suspensions.

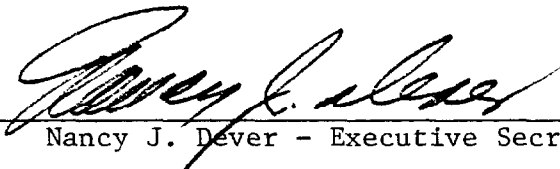
Based upon the serious offense committed by the Claimant on March 15, 1982 and in light of his unsatisfactory past record, the Board is persuaded that the penalty of dismissal is warranted.

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 17th day of October 1984.