

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

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

Dispute: Claim of Employees:

1. That the Carrier's action in dismissing Laborer Sylvester Harper, from its service on September 13, 1984, after investigation, was indeed harsh, out of proportion, excessive, arbitrary, capricious, and constituted an abuse of managerial discretion.

2. That accordingly, the Burlington Northern, Inc. restore Laborer Sylvester Harper to service - -

- (a) With his seniority rights unimpaired;
- (b) Compensation for all time lost;
- (c) Make whole all vacation rights;
- (d) Pay premium (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 employe or employes involved in this dispute are respectively carrier and employes 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 matter involves the dismissal of Laborer Sylvester Harper from all service with the Carrier on September 13, 1984. An Investigation was held on August 22, 1984, and the record of the proceedings show that the Claimant

was employed as a Laborer at the Carrier's Memphis, Tennessee Diesel Shop with approximately eleven years of service. The Carrier charged the Claimant with failure to protect his assignment on July 17, 1984. The underlying facts, as shown in the record, reflect that the Claimant was assigned to the 6:30 A.M. to 2:30 P.M. shift, and that his primary responsibility was to operate a fuel service truck from the Memphis facility to a sub-yard, approximately eleven miles away, for the purposes of fueling, sanding, cleaning, and supplying three switch engines prior to their on-duty time of 7:59 A.M.

The record shows that Claimant failed to report at his normal starting time of 6:30 A.M. and telephoned the Carrier's Diesel Foreman at approximately 7:15 A.M. and informed the Foreman that he had overslept and requested permission to meet the same truck at the sub-yard. Claimant's request was not approved by the Diesel Foreman who instructed the Claimant to contact the Carrier's General Foreman who, when contacted by the Claimant denied the request and informed Claimant that he would be ". . . off the rest of the day."

The Board has reviewed the record in its totality and finds that the Carrier has sustained its burden of proving the charge against the Claimant.

With regard to the measure of discipline imposed by the Carrier, the Organization claims that:

"1. Carrier's action . . . was indeed harsh, out of proportion, excessive, arbitrary, capricious, and constituted an abuse of managerial discretion, and

2. That the Carrier " . . . restore (the Claimant) to service (a) with seniority rights unimpaired; (b) compensation for all time lost; (c) make whole all reaction rights; (d) pay premiums for hospital surgical, and medical benefits . . .; (e) pay premiums for (Claimant's) group life insurance . . ."

In considering Claimant's case, the Board notes that the Claimant's personal record has several entries concerning Claimant's tardiness, however, the Board is also cognizant of the primary purpose of discipline; i.e. to teach employees rather than to overly penalize them. The Board is of the opinion that given the particular nature of the facts of this case, the discipline has now served its purpose and the Claimant should be reinstated to service, but with no pay for time lost or any other Claim contained in items (b) through (e) in the Organization's Claim.

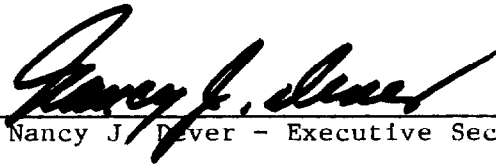
The Board is quick to point out to the Claimant that should he ever, in the future, commit an offense similar to the instant matter, the Board will not look so favorably upon a request for reinstatement. The Board expects that if Claimant elects to return to the service of the Carrier, his attendance record will become exemplary.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1987.