

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11635
Docket No. 11472
89-2-87-2-140

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Electrician R. D. Craig of Alliance, Nebraska was unjustly suspended from the service of the Burlington Northern Railroad Company following an investigation held September 23, 1986.

2. That accordingly, the Burlington Northern Railroad Company be directed to compensate Electrician Craig for all wages lost as a result of the subject suspension, restore all benefits he is entitled to under the Agreement and remove all record of this investigation and discipline from his personal record.

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.

The Claimant and his Supervisor disagree on the core issue...was Claimant sleeping in the cab of a locomotive during working hours? The Supervisor contended that he observed Claimant for five (5) minutes (seated, head back and his eyes closed). The Claimant contends that he was not sleeping and he saw the Supervisor climb on to the locomotive (therefore, no five minute observation period). Subsequent to an Investigation Claimant was suspended from service for ninety (90) days.

The record is clear that Claimant had been instructed numerous times to return to the Pit Office when an assignment was completed or when waiting for an assignment. In this matter, Claimant did not follow those instructions; rather he positioned himself inside a locomotive some distance from the pit. It is also clear from the record that for approximately forty (40) minutes Claimant could not be reached on the radio.

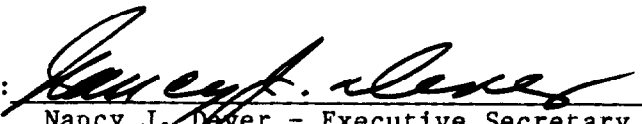
In the absence of any evidence that the testimony of the Supervisor was motivated by bad faith or any improper motive, and given that Claimant did not return to the Pit Office nor could he be reached during an extended period of time, we conclude that controlling credibility has been properly assigned by the Investigating Officer to the testimony of the Supervisor. We find no basis in the conduct of the Hearing or the record of the case to justify substituting the judgment of this Board for that of the Investigating Officer. This Board has similarly ruled in a number of cases (Second Division Awards 6372, 4981, 7542, 7975, 9386.)

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 January 1989.