

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

PARTIES TO DISPUTE: ((Sheet Metal Workers International Association
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement when they improperly dismissed Sheet Metal Worker K. L. Newland from the service of the Burlington Northern commencing October 5, 1988 as a result of an investigation conducted on September 9, 1988 at the West Burlington Iowa Diesel Repair Facility.

2. That accordingly, the Carrier be required to compensate Mr. Newland for all time lost in addition to the amount of 6% per annum compounded annually; remove impairment of his seniority; make Mr. Newland whole for all vacation rights; reimburse Mr. Newland and/or his dependents for all medical and dental and expenses incurred while Mr. Newland was improperly held out of service; pay Mr. Newland's estate whatever benefits he has accrued with regard to life insurance for all time he was improperly held out of service; pay Mr. Newland for all contractual holidays; pay Mr. Newland for all jury and other contractual benefits to which he is entitled.

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.

The Organization argues that the charge was not precise nor was a Rule violation cited. A review of the charges reveals that they were sufficient to allow the Claimant to prepare a defense. Claimant was apprised of the precise charge against him with copy to his representative.

The Board in previous cases has decided that it is not necessary that a specific Rule be set out in the notice of charges in the Investigation. See Second Division Award 7955, Third Division Awards 18903, 11170 and 11443.

On page 23 of the transcript of Investigation, Claimant admitted he was issued BN Safety Rule Book BN 15001 and had signed for the Rule Book. "Rule 569 states 'Employees must not sleep while on duty. Lying down in a slouched position with eyes closed or with eyes covered or concealed will be considered as sleeping. Did you violate that rule on August 30, 1988 at 2:40 P.M.?' " Claimant answered "For some reason yes." Claimant stated further that the noise of Unit 318 running, safety glasses that do not fit properly and are very uncomfortable, he frequently developed headaches. He further stated that if he removed the glasses, relaxed and rubbed his temples he could shake it. There is no evidence of record that a complaint had been filed with his Supervisor.

On page 24 of the transcript of Investigation Claimant was asked "But on the date in question, you did sit in a slouched position with your eyes closed in the engineers seat of the BN 8042." Claimant answered "Temporarily yes." "Did you at that time violate rule 569? As it reads yes."

Therefore based on the testimony of the Claimant he convicted himself.

The record made on the property reveals this was Claimant's second violation of Rule 569. He was suspended for 30 days during February 1986.

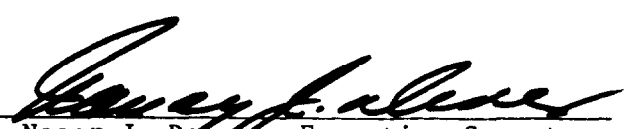
The Board will not interfere with a decision where there was sufficient or substantial evidence. We are without authority to overturn Carrier's decision.

Accordingly, we will deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1990.