

The Second Division consisted of the regular members and in addition Referee Donald E. Prover 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 D. H. Wimberley was unjustly suspended for a period of thirty (30) days October 6, 1988 through November 4, 1988 inclusive from the service of the Burlington Northern Railroad following a unfair investigation held September 16, 1988.

2. That accordingly, the Burlington Northern Railroad be directed to compensate Electrician Wimberley for any and all wages lost by him during the thirty (30) day suspension and restore any seniority, vacation, railroad retirement or any other rights or benefits to which he may be entitled under the agreement, Rule 35 (g) in particular and which may have been adversely affected by said suspension. Claim includes removal of the mark of censure and all record of the subject investigation from Electrician Wimberley's personnel 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 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 Claimant was employed as an Electrician at the Carrier's Diesel Facilities. On September 3, 1988 at approximately 5:15 A.M. two Foremen and a hostler observed the Claimant sleeping in the Start Up Office. In a letter dated September 8, 1988 Claimant was advised to attend an Investigation to determine responsibility:

"in connection with your allegedly sleeping in the Start Up Office and your alleged failure to comply with instructions at approximately 5:15 a.m., September 3, 1988."

Following the Investigation the Claimant was notified that an entry of censure was being placed against his personal record and that he was suspended from service for thirty days for violation of Safety Rules and General Rule 569 in connection with sleeping in the Start Up Office. He was not found guilty of failure to comply with instructions contrary to the Employees position that the Investigation accorded the Claimant was neither fair nor impartial. Our review of the Investigation transcript finds that it was conducted in a fair and impartial manner. Both Claimant and his Representative were afforded full opportunity to question all witnesses. While the officer conducting the Investigation had prior discussions with some of the witnesses we cannot find where his line of questioning at the Investigation was biased against the Claimant.

The Employees also argue the discipline assessed was excessive. There is no question that the Claimant was sleeping on duty. The question then to be addressed is whether the discipline was excessive. Claimant had over 8 years prior service on September 3, 1988. He had no prior discipline record. Claimant after completing work on some diode panels said he went to the Start Up Office to await another assignment, which he said was the usual procedure. His Supervisor stated the usual procedure is for employees to contact him when they have completed an assignment. This apparent conflict in procedure was never resolved by the Hearing Officer. The Start Up Office is not in a remote area but rather is a location where employees normally report for assignments. It cannot, therefore, be said that the Claimant went to an area where he could not be contacted or not be detected if he went to sleep. Nowhere in the Investigation testimony was it brought out that the Claimant did not complete all work assigned to him or that there was work undone that he should have been doing when he was sleeping.

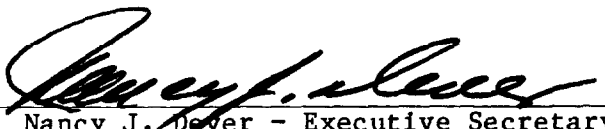
In conclusion this Board in no way condones sleeping on duty, however, in this case we find (for the reasons stated in the above paragraph) the discipline to be extremely harsh and excessive. We, therefore, are sustaining the Claim to the extent that the discipline shall be reduced to a five-day suspension. Payment for the excessive 25 days the Claimant was suspended shall be in accordance with Rule 35 (g) - Investigations. There is no basis to support any Claims for rights or benefits that are not specifically provided for in Rule 35 (g).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1990.

CARRIER MEMBERS' DISSENT
TO
AWARD 11921, DOCKET 11859
(Referee Prover)

A disciplinary suspension of 30 days for a proven incident of sleeping on duty is not excessive discipline. This Majority was given eleven prior decisions of this Division involving this same Carrier and the charge of sleeping on duty.

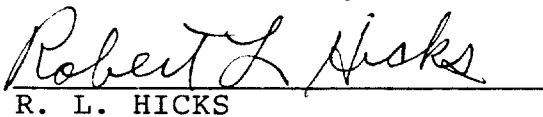
The Majority states at page 2 of the Award that Claimant, "...had no prior discipline record." That conclusion is in error and is not supported by the record. Such a contention was never argued on the property. The Organization did argue that Claimant had, "...a relatively clean work record..." and that he, "...was disciplined excessively for his past work performance..."

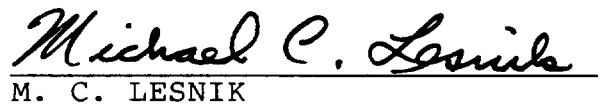
The Majority's basis for modification of the discipline is erroneous and as such the discipline was appropriate and proper.

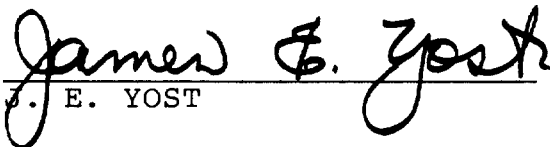
We Dissent.


P. V. VARGA


M. W. FINGERHUT


R. L. HICKS


M. C. LESNIK


J. E. YOST