

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12830
Docket No. 12784
95-3-93-2-128

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(The Chicago and Northwestern Transportation
(Company

STATEMENT OF CLAIM:

- "(1) That the **Chicago and Northwestern Transportation Company** violated the Agreement, effective December 1, 1985, in particular Rule 26, when they wrongfully dismissed **Electrician Wayne Carder**, on July 16, 1992, after an investigation held July 14, 1992.
- (2) That the Chicago and North Western Transportation Company, herein after referred to as Carrier, promptly reinstate Electrician Wayne Carder to service with all seniority rights unimpaired and make him whole for all lost wages and benefits lost, including but not limited to vacation rights, insurance, hospitalization, railroad retirement rights and benefits lost, as as 10% interest on all monies lost account of the Carrier's most capricious action beginning July 16, 1992 and continuing until Mr. Carder is reinstated."

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 employee 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 were given due notice of hearing thereon.

By proper notice Carrier convened an Investigation on July 14, 1992, to determine if Claimant was sleeping on duty on May 30, 1992 at approximately 3:00 A.M.

The following facts were adduced at the July 14, 1992, Investigation. Claimant was first observed by a Supervisor with two feet on top of the engine heater, head forward on his chest with his eyes closed. That Supervisor found another and both observed Claimant in that position for about five minutes. They then entered the engine cab and woke Claimant.

Claimant testified that he was in a reclined position with his eyes closed. The following is an excerpt from the Investigation. The Interrogating Officer is querying the Claimant:

"Q. Could you also read Rule 602, please, on page 44?

A. 'Employees must not sleep on duty. Employees who are in a recline position with eyes closed or covered with (sic) be considered in violation of this rule.'

Q. In the position you were in that evening. Would you consider yourself being reclined?

A. Yes.

Q. Do you feel you were in compliance with Rule 602?

A. No."

The Organization has challenged the propriety of the Investigation arguing that Carrier refused to call all pertinent witnesses and that it hindered the Claimant's Representative from presenting a defense they believed pertinent.

Regarding the witness argument, at the commencement of the Investigation the following testimony was established. Claimant is being queried by the Interrogating Officer:

"Q. Do you have any witnesses present in your behalf?

A. No.

Q. Are you now ready to proceed with the Investigation?

A. Yes."

The Discipline Rule, Rule 26 provides in section (c) thereof as follows:

"(c) At least five (5) days advance written notice shall be given to the employee(s)...in order that the employee(s) may arrange for...the presence of necessary witnesses desired."

Claimant had more than five days to prepare his defense, to secure any witness or witnesses he believed pertinent as the Investigation was first set for June 9, 1992, but was not held until July 14, 1992, (by mutual agreement). The Carrier provided the witnesses it believed pertinent to the case. Claimant did not.

Even though the Carrier rebuffed the Representative from pursuing a defense attempting to show Carrier was biased towards electricians in general and Claimant in particular, a bias that could perhaps lead to a derailment of the discipline process, nothing can be said or argued in this case, that could overturn Claimant's admission of a rules violation.

Even though a singular occurrence of sleeping on duty is an offense that has resulted in termination from service, when Claimant's past record is considered in conjunction with this act, it is the opinion of the Board that the dismissal must stand.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.