

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13949
Docket No. 13816
NRAB-00002-060030
(06-2-30)

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Dispute – Claim of Employee:

That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated the National Agreement dated June 1, 1960, as amended, between the International Association of Machinists and the Union Pacific Railroad Company when it assessed Machinist Jack Wheeler (hereinafter referred to as claimant) with a Level 2 discipline.

Relief Requested:

That the Union Pacific Railroad Company be ordered to expunge the Level 2 discipline from the Claimant’s 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 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.

Notified by letter dated May 8, 2006, the Claimant attended an Investigation June 7, 2006 to determine alleged violation of Rule 1.1.1, Sleeping. Subsequently, the Claimant was notified June 16, 2006 that he had been found guilty as charged and assessed a Level 2 discipline, which was progressively upgraded to Level 3.

There is contradictory testimony in this record. Electrician McGill denies that the Claimant was reclined and a review of his testimony suggests that with dark lens sun glasses and location, the testimony of Supervisor Powers is less than credible. Supervisor Powers testifies that the Claimant was definitely sleeping, that,

“I went to the 2018 first and then I . . . walked around and I observed Jack - - the back of his head actually. He was laid back in the seat. When I walked into the locomotive, he was still reclined.”

When the Claimant was asked if he was reclined when Supervisor Powers approached him the Claimant testified, “No, sir, I was not”.

The Board has carefully and fully reviewed the evidence of record. We find no procedural errors. We find that the Carrier has proven guilt by the note and testimony presented as to the circumstances of May 3, 2006. Supervisor Powers wrote [original punctuation]:

“At around 11:00 I walked up on Unit UP2018, in DSS 4 track and discovered Electrician Patrick McGill and Machinist Jack Wheeler [Claimant] in cab of unit. Patrick was in the Engineers seat, looking out south and Jack was in the Conductors seat asleep, reclined with feat (sic) up in the jump seat. I informed the both of them, I had work for them to do and gave them instructions.

They never performed the task and I put Patrick on another job.

I went to lunch @ (sic) around 12:00, and around 12:30 went to look for Jack Wheeler, I walked up yo (sic) UP 2018 thinking he may still be on that unit.

He was not, as I looked around I saw him reclined and sleeping on UP 6755. I observed him for a few minutes, and then walked around the unit to the rear door and opened it and Jack jumped. Jack was sluggish to respond. I informed Jack once again that I had work for him to do.

I went to DSS 1 track with Jack and gave him the UP 756 to work.”

The Board has reviewed the conflicting testimony and facts. In its appellate role, the Board does not observe witness testimony and absent clear reason to challenge the credibility decision of the Carrier, it must accept such decisions. After full review, the credibility decision in this instance will not be overturned. As for the evidentiary basis to support the charges, we find that the Carrier has provided substantial evidence to prove guilt. In light of all of the circumstances associated with this dispute, the claim must be denied.

AWARD

Claim denied.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 15th day of July 2008.