NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24691
THIRD DIVISION Docket Number MW-24964

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company (former
(St. Louis-San Franicsco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator B. W. Ellis "for allegedly being asleep while operating Ballast Regulator on System Gang S-5" was excessive and unwarranted (System File B-1689-1/MWC 82-6-9C).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant, a Machine Operator, was charged with being asleep while operating a Ballast Regulator. After an investigative hearing, the Claimant was dismissed from Carrier's service.

The Organization raises a threshold issue, noting that the Carrier, as a basis for its dismissal of the Claimant, cited violation of three of its rules. It holds that only one of these rules relates to the specific charge of sleeping levied against the Claimant. Therefore, the use of the other two rules by the Carrier was violative of Rule 91 (a) which reads:

> "(a) Employees disciplined or dismissed will be advised by the precise charge of such action, **in writing** if requested."

On the merits of the issue before us, the Organization essentially holds that the penalty of dismissal was excessive.

With respect to the procedural issue, in that the **Carrier** cited three rules (Rule 700, 702 and 569), the Board finds the Carrier's construction of these rules, under the circumstances of record, to be reasonable. Moreover, the **notice** of **investigation** precisely described the nature of the alleged offense to be investigated. It is apparent by the wording of this notice and the transcript of the hearing that the Claimant was aware of the charge and was not misled as to the specific nature of **it**.

The Board finds that the evidence supports the charge. The discipline assessed, particularly when viewed in light of the Claimant's previous work record, which included two prior dismissals, was not excesssive.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute inovlved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of February, 1984