

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Fred L. Dudley  
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"I submit that due to the Carriers violation of Rule 54 of the Agreement between Burlington Northern Inc. and its employees represented by the Brotherhood of Railroad Signalman, and due to the biased arbitrary and capricious manner in which this matter was handled by the local Carrier and union officers.

I submit that the discipline be vacated and be compensated for all lost time, expense and benefits."

FINDINGS:

The Third 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 were given due notice of hearing thereon.

Subsequent to an Investigation, the Claimant was dismissed from Carrier's service for sleeping on duty, but was reinstated some months later.

The Claimant asserts that the Carrier violated Rule 54 since it did not afford appropriate notification to the Claimant of the date of the Investigation. Ultimately, the Investigation proceeded without the Claimant in attendance.

Our review of the record shows that the Carrier made diligent efforts to serve the Claimant with notification and that there were a number of requests for postponement. Moreover, we are convinced that the Claimant was well aware of the efforts. In fact, the Claimant refused to accept certified mail notification because there was thirty cents postage due. At the Investigation, the Local Chairman conceded that the Claimant was aware of the Investigation even though he was not present.

We find no merit in the Claimant's procedural objection.

There is sufficient evidence of record to demonstrate that the Claimant was guilty of the charge against him.


At the oral argument, Claimant made reference to a certain alleged "waiver" however we fail to find that such an assertion was timely made while the matter was under review on the property.

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 28th day of February 1991.