

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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* CASE NO. 18
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* AWARD NO. 18
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Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employes (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- " 1. The dismissal of Section Laborer Delwyn Huenink November 7, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense.
2. That Section Laborer Delwyn Huenink be returned to service with seniority rights and privileges unimpaired, his record cleared and paid for all time lost."

The Claimant, Delwyn Huenink, entered the service of the Carrier on May 5, 1978, as a Section Laborer. On October 3, 1979, the date of the incidents that led to this claim, the Claimant was employed as a Section Laborer on the Sioux Center, Iowa section. He is alleged to have been observed sleeping on two occasions; first "...on the rear of the crew's hi-rail truck," by his foreman, at approximately 11:00 a.m. Later, at approximately 2:00 p.m., Roadmaster T. Neeser saw him sleeping in "...the back seat of the truck."

By notice dated October 5, 1979 the Claimant was cited to attend an investigation of his alleged "...sleeping while on duty hours while working at M.P. 162.9 near Doon, Iowa at 11:00 a.m. and at M.P. 158, Alford, Iowa, at 2:00 p.m. on October 3, 1979."

The investigation was initially scheduled for October 15, 1979, but was subsequently postponed by mutual agreement until October 25, 1979. On that date the investigation was conducted; the Claimant was present and accompanied by a duly designated representative of the Organization.

The record, which includes the Claimant's admissions, and the testimony of an eye witness to each of the sleeping incidents, leaves no doubt that the Claimant was asleep during duty hours, in clear violation of Rule 673 of the Burlington Northern's Safety Rules which provides:

"Employees must not sleep while on duty, lying down or in a crouched position with eyes closed or with eyes covered or concealed to be considered as sleeping."

Neither the Organization, nor the Claimant denies the Claimant's knowledge or violation of Rule 673; they would have this Board find that the Claimant's behavior is mitigated by a physical requirement that he take prescribed medication which induced drowsiness. It is also argued that "...no productive work was being performed at the time the Claimant was allegedly sleeping."

Under other circumstances the Claimant's asserted medical condition, and the associated drowsiness caused by the prescription, might gravitate in favor of a reassessment of his dismissal. However, here we have a Claimant who received a 30-day suspension for the same rule violation, sleeping while on duty, only 3 months prior to the instant claim; who was awakened from sleep on duty by his foreman at 11:00 a.m., and then fell asleep while on duty for the second time, at 2:00 p.m. on the same day; and all of these incidents occurred within the first 14 months of his employment with the Carrier.

If the Claimant knew, as the record indicates he did, that the current dosage of his medication made him drowsy, and as such a potential safety hazard to his co-workers and himself, he should have marked-off on July 3, 1979. Failing that, he could have reported himself unfit to continue duty when he was first awakened

from sleep on duty, by his foreman. He did neither, and as a result is guilty of three violations of the same rule against sleeping while on duty.

The Organization's argument that no work was being done while the Claimant was sleeping does not relieve the Claimant of his responsibility for complying with the Carrier's prohibition against sleeping while on duty. Accordingly, this claim must be denied.

AWARD: Claim denied.

F. H. Funk
F. H. Funk, Organization Member

W. Hodynsky
W. Hodynsky, Carrier Member

Richard R. Kasher
Richard R. Kasher, Chairman
and Neutral Member

July 21, 1983
Saint Paul, MN