

File: MWB-82-1-18K
B-Y-162C

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 5
)	
vs)	
)	Award No. 5
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Section Laborer D. W. Jablinske for alleged violation of Rule 702 of the Burlington Northern Railroad Company was unwarranted and without just and sufficient cause.
2. The Claimant shall be reinstated with seniority and all other benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

On August 25, 1981 the Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged failure to report for duty as laborer for the section on which he was assigned at 6:30 AM on August 24, 1981 at Miles City, Montana. After the hearing was held as scheduled on August 31, 1981 the Claimant was advised that he had been found guilty as charged and he was discharged from service. He was discharged on September 25, 1981.

The Rule at bar which the Claimant allegedly violated is the following one.

Rule 702: Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the company's

Public Law Board No. 4161 (Award No. 5; Case No. 5)

service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority.

This discipline was appealed by the Organization on property up to and including the highest Carrier officer designated to hear such before this case was docketed before this Public Law Board for final adjudication.

The record shows that the Carrier's witness, the Assistant Roadmaster, testified that the Claimant was not present to cover his assignment on the day and hour in question, and this is corroborated by the testimony of the Claimant himself. According to testimony of the Claimant he was also familiar with the Rule in question. He further volunteered that the reason he did not cover his assignment was because he "...woke up late" on the day in question. The reason he woke up late was because his alarm clock did not go off.

Although the Claimant stated in hearing that he attempted to call the Roadmaster's office and report in after he woke up there is sufficient evidence of probative value in the record to support the charge. Arbitral precedent in the railroad industry establishes that oversleeping is an unacceptable reason for missing one's assignment (Second Division 4165, 6710; Fourth Division 2598 inter alia). The claim cannot, therefore, on the basis of evidence and on merits be sustained.

The only issue to be addressed by this Board, therefore, is if the quantum of discipline was arbitrary and/or capricious. A review of the Claimant's personal record shows a pattern of Rule 702 violations prior to the instant discipline. Such violations led to prior disciplines in July of 1979, August of 1980, and January and August of 1981. Such record warrants the conclusion, as arbitral precedent establishes (Third Division 21043, 22320, 23508), that the quantum of discipline here at bar should not be disturbed. Assessment of discharge in the instant case was a reasonable and just application

Public Law Board No. 4161 (Award No. 5; Case No. 5)

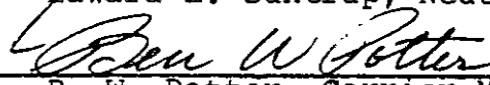
of the principle of progressive discipline.

AWARD

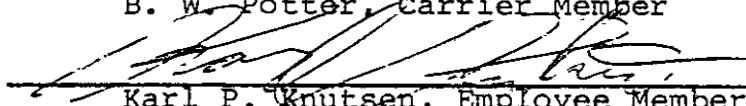
Claim denied.



Edward L. Suntrup, Neutral Member



B. W. Potter, Carrier Member



Karl P. Knutsen, Employee Member

Date: January 20 1957