

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 53

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to dismiss Western Region Employee Robert J. Madewell from service was unjust.
2. That the Carrier now rescind their decision, return the Claimant to service with seniority and all other rights unimpaired, expunge the discipline from the Claimant's record and pay him for all wage loss as a result of his dismissal from service.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because Carrier did not submit substantial evidence that proved the Claimant violated the Rules enumerated in their decision. We contend that even if the Claimant was in violation as alleged, the punishment is extreme in proportion to the rules cited.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was cited for, and dismissed for, sleeping while on duty.

From the transcript, Claimant admitted dozing off during a morning job briefing. There is no dispute in facts. Sleeping on duty has been considered as a serious offense and has resulted in severe discipline, even dismissal, but each case turns on its own. In this case there was no attempt by the Claimant to defraud the Carrier by sneaking off to a secluded area for a nap, nor did Claimant doze off while operating any machinery. Claimant did testify that he had been named executor of the estate of his deceased step-father, and that he was up late searching the deceased's premises and belongings for any and all papers needed to discharge his responsibility as an executor.

Claimant's representative's plea of Carrier depriving Claimant of a fair and impartial

Investigation by having the Roadmaster testify as to what the Foreman relayed to him could have had some bearing on this issue, however, Claimant did admit that he dozed off during the morning briefing.

The Carrier did, in its defense of the dismissal, refer to Claimant's rather dismal work record compiled since he commenced service in 1990.

There are two issues before this Board and that is the suspension from service prior to the investigation, and the discipline imposed following the investigation.

Normally and routinely, a suspension pending the results of an investigation is reserved for situations wherein the soon to be charged employee's continued employment to the time of the investigation would in some way be detrimental to the health and safety of the Claimant and/or to others that he works with.

Dozing off in a briefing session does not meet that criteria. Claimant is to be paid for time lost commencing with the first day of suspension up to, but not including, the day of the investigation.

Concerning the discipline of dismissal, it is the Board's findings that the incident does not warrant the supreme discipline. The dismissal is reduced to a long suspension. The support for a long suspension is somewhat justified because of Claimant's unenviable work record compiled since 1990, the day he commenced working.

Claimant is to be returned to service with all his seniority intact, but without pay for time lost commencing with the day of the investigation until the day of his actual return. Claimant must, however, recognize that if there is another incident warranting the invocation of the disciplinary process, Claimant's work record could readily support a permanent bar to his future as a Trackman even though this incident, itself, would be deemed minor in nature.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

Robert L. Hicks
Robert L. Hicks, Chairman & Neutral Member

C. F. Foose
C. F. Foose, Labor Member

Thomas M. Röhling
Thomas M. Röhling, Carrier Member

Dated: October 23, 1997