

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

-and-

NORFOLK SOUTHERN RAILWAY
COMPANY

AWARD

Case No. 176

Claimant D. L. Brown

STATEMENT OF CLAIM:

“Claim on behalf of Electrician D. L. Brown in Chattanooga, Tennessee, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Brown is unjustly withheld from Carrier’s service. We also request his personal record be cleared of this matter.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

By letter dated December 12, 2017, Carrier dismissed Claimant Brown for his responsibility in connection with the following violations of its rules:

“1. Your being away from your assigned work area without proper authority between approximately 5:15 AM and 5:30 AM on October 15, 2017, in violation of General Safety Rule 919 of the Norfolk Southern Book of Safety and General Conduct Rules.

2. Your being in violation of Section (b) of Rule 2 of the Norfolk Southern Book of Operating Rules in that you were observed by Mechanical Supervisor J. W. Hughes to be sleeping on duty in the maintenance line locker room at approximately 5:30 AM on October 15, 2017. ‘‘

3. Your being in violation of Chattanooga Diesel Shop Standard Operating procedure No. 194 issued November 24, 2011 in that you were observed to be in possession of and/or using a personal electronic device while located in maintenance line locker room,, at approximately 6:10 AM on October 15, 2017.

The Organization raises several points in challenging Carrier's dismissal action. First, it asserts the penalty assessed was unduly severe in the face of the Company's prior lax administration of rules forbidding employees from being away from their work locations. Secondly, it maintains Claimant was in a non-restricted area/ rest room when assertedly observed using his personal cell phone. Accordingly, Carrier has failed to carry its burden of proof.

Upon careful review of the record, the Board finds those arguments unpersuasive. The testimony and documentary evidence offered in Carrier's formal investigation established that after not being able to find Claimant on the morning of October 15, 2017, and requiring his input on a sheet work task, Chattanooga Diesel Shop Mechanical Supervisor James Hughes commenced a search at 5:15 a.m. According to Hughes, after checking in the storehouse and maintenance line lunchroom he eventually located him at approximately 5:30 a.m. in the locker room lying on a bench with his hoodie pulled over his eyes, apparently sleeping, although he could not see his eyes. Grievant made no movement until the locker room door was closed. He then began to move his feet and after Hughes put his question to him Claimant opened his hoodie and replied, remaining in the lying position throughout a 3-minute discussion. Hughes states that prior to going to the office of Senior General Foreman Steven Hurley he passed by the locker room again and observed Claimant on his mobile phone. Asked to come with Hughes, Claimant replied that he would be with him "in a few minutes."

Hurley explained that legitimate absence from work station is always dependent on circumstances. While there is no requirement for employees to seek permission to step away for visiting a restroom, because of the nature of the work, if it will be an extended period of time permission is needed. According to Hurley, there is a restroom located in a

separate room in the locker room area. In any event, a 40-minute restroom break would be considered unusual. In this instance, an initial coffee break on the 11:00 a.m. – 7:00 p.m. shift is taken at approximately 1:00 a.m. and an additional 20-minute break at 3:00 p.m.

Claimant Brown testified that he had completed his work by approximately 3:15 a.m. After determining that he was unable to make certain additional repairs immediately he signed off on everything else and waited for 20 minutes for Mr. Hughes to come to the work site. When he didn't come, Claimant says he went to the locker room to take his break. According to Claimant, Hughes came in approximately 10 minutes later and they spoke, Claimant sitting upright on the back bench. Asked what he had done between 4:52 a.m. and 5:30 a.m. after taking his 20-minute lunch break, Claimant stated, "I was just sitting the locker room just sitting." Upon being interviewed by both Hughes and Hurley he stated that "he thought it was the place to be and was just waiting for time to pass." Claimant indicated that he had been in the locker room for approximately 40 minutes before encountering Hughes, conceded that he had not notified anyone he would be out of his work area, and denied that he had been lying on a bench.

The record affords no basis for modifying Carrier's action. As it correctly argues, the testimony of two Carrier Officer established clear violations of multiple operating rules. Sleeping, use of a personal electronic device and absence from assigned work area without authorization are serious offenses In this instance, when laid up against Claimant's prior service record which included three Serious offenses within a 24-month period, no mitigating factors were presented favoring leniency. On that basis, the claim must be denied.

A W A R D

The Claim is denied.

Tom Owens
Tom Owens
Employee Member

James E. Conway
James E. Conway
Chairman and Neutral Member

Tara Arnett 02/11/2020
Tara Arnett
Carrier Member

Dated: January, 2020S