

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 7742  
Docket No. 7485  
2-L&N-MA-'78

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

Claim in behalf of Machinist George Steele, Gentilly Yard, New Orleans, for pay for all time lost, seniority rights, vacation, insurance, and all other rights unimpaired, beginning with that period of time Mr. Steele was relieved from duty on October 28, 1975, pending investigation, and his dismissal from the Louisville & Nashville Railroad Company, effective February 12, 1976, until the matter is settled.

Findings:

The Second 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 employe 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 waived right of appearance at hearing thereon.

Claimant was dismissed on the grounds that, on specified dates, he was observed sleeping on duty and that he gave false information. The latter charge is based on Carrier's allegation that Claimant left his job on the dates in question before completing his assignment and still claimed a full day's pay for these days.

A discussion of the facts contained in this voluminous record would serve no useful purpose at this time. Suffice it to say that this Board concludes from the record that the evidence is not conclusive with respect to the charge of sleeping on duty on all the dates cited in the charge. In addition, Claimant's testimony at the formal investigation that he had received authorization from key supervisory officials to leave the job prior to his scheduled quitting time was not challenged, nor did Carrier call any of the named Carrier officials to refute Claimant's statement that he had received permission to leave before the end of his shift.

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The Board, accordingly, is of the opinion that the penalty of discharge is too severe in the instant situation. Claimant has been out of Carrier's service for a prolonged period. Given the particular circumstances of this case, we believe that the discipline meted out to Claimant has served its purpose, and we therefore direct that Claimant be restored to service, but without back pay.

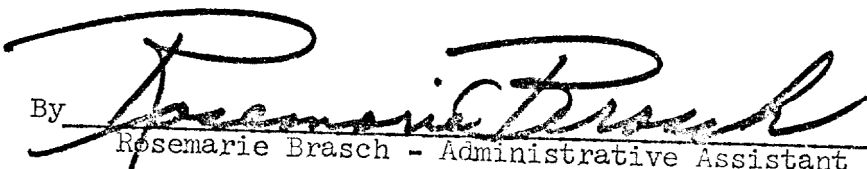
A W A R D

Claim sustained to the extent specified in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November, 1978.