

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
 { Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Service Attendant E. Wallers, I. D. No. 371580, was unjustly suspended from service of the Louisville and Nashville Railroad Company on October 4, 1979, for a period of thirty (30) days beginning October 5, 1979, through November 3, 1979, inclusive, after a formal investigation was held in the office of Mr. R. G. Littrell, Asst. Master Mechanic, Conducting Officer, on August 28, 1979.
2. That accordingly E. Wallers, Service Attendant, be restored to his regular assignment at L&N Decoursey Shops, Covington, Kentucky, compensated for all lost time and that he be properly restored to his rightful position, vacation, health and welfare, hospital, life and dental insurance be paid October 5, 1979, through November 3, 1979, inclusive and the payment of 6% interest rate be added thereto.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This matter involves a disciplinary suspension of thirty (30) days for sleeping while on duty August 2, 1979. Claimant is a Service Attendant, who was employed September 14, 1976. The Organization disagrees with the facts developed during the investigation and asserts the Carrier did not prove Claimant was sleeping.

Essentially, the Carrier viewed the record as containing substantial and convincing evidence in support of the conclusion Claimant was sleeping. W. L. Gordon, General Foreman, testified he found Claimant in the engineer register room seated at a table with his back to the wall and with his head resting in his left hand. He called out to Claimant twice. The third time, Claimant raised his head. The Claimant denied being asleep.

At the investigation, testimony established the Claimant was using a prescription medication, "Sumycin". The Conducting Officer chose to read into the record a statement to the effect the transcript of this investigation regarding Claimant may be needed for a future investigation charging Claimant with being under the medication of drugs. The Organization representative objected on the basis the Conducting Officer has no knowledge of the effects of the prescription medication, "Sumycin". The Conducting Officer's statement was improper in that it was not a reasonable conclusion based upon the record before him. That record is held to be without fact or basis for such a holding.

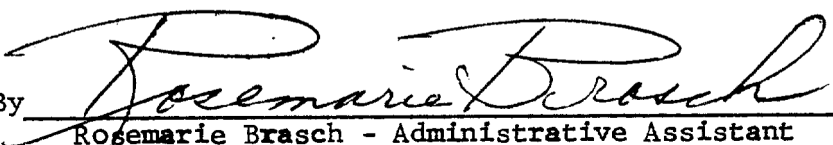
However, despite the introduction of an improper, collateral matter, a careful review of the entire investigation clearly establishes a fair and impartial investigation was conducted with respect to the charge of sleeping while on duty. The conclusion reached by the Carrier is supported by a substantial weight of the evidence and sustains the finding Claimant was sleeping August 2, 1979.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.