

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Gary Smertz was unjustly dismissed from service of the Carrier following investigation held on March 28, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned Gary Smertz whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten [10%] percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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 employes 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.

Following an investigative hearing conducted in a fair and proper manner, the Claimant was dismissed from service on the charge of being "found in a restful position asleep in car 2992 away from your assigned duties".

The record leaves no doubt of proof of the charge. The Claimant had been in service for only 61 days, but his obligations should have been clear to him to remain in his work area (unless otherwise given specific permission) and certainly to avoid going to sleep in a secluded area. Dismissal is not inappropriate under such circumstances.

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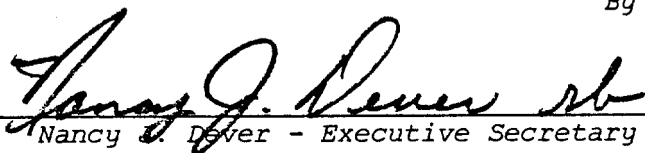
Award No. 10001
Docket No. 9365
2-NRPC-FO-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.