



Award No. 5680

Docket No. 5582

2-IC-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Rayford Brown was unjustly suspended from the service of the Illinois Central Railroad for a fifteen (15) day period beginning June 29, 1966 through and including July 13, 1966.

2. That accordingly the Illinois Central Railroad be ordered to compensate Carman Rayford Brown for all time lost account of the aforesaid unjust suspension.

EMPLOYEES' STATEMENT OF FACTS: Carman Rayford Brown, hereinafter referred to as the Claimant, entered the service of the Illinois Central Railroad, hereinafter referred to as the Carrier, in the year 1955. At the time of the incident giving rise to the instant claim, Claimant was regularly employed by Carrier as a Carman at Weldon Coach Yard, Chicago, Illinois, with assigned hours and work week of 11:00 P. M. to 7:00 A. M., Saturday through Wednesday, rest days Thursday and Friday.

On June 30, 1966, Carrier's General Foreman C. S. Keune addressed the following letter to Claimant:

"June 30, 1966

Mr. Rayford Brown
6348 Langley Avenue
Chicago, Illinois

Dear Sir:

You will arrange to be present at a formal investigation to be held in the General Foreman's office located at Weldon Coach Yard, Chicago, Illinois at 9:00 A. M., Central Standard Time, Wednesday, July 6, 1966.

The Second Division has consistently ruled that sleeping on duty is subject to discipline. On several occasions the Board has upheld dismissals for the same offense. The company contends that the fifteen-day suspension penalty was most lenient under the circumstances.

Therefore, there is no support for the union's claim that Mr. Brown was "unjustly suspended."

The company asks the Board to deny the union's claim.

(Exhibits not reproduced.)

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.

This Claimant was charged with having been found asleep while on duty approximately 1:40 A. M., June 29, 1966, on a Third Shift. Investigation was held on July 6, 1966, after proper notices had been given to all parties concerned. As a result of the investigation, this Claimant was suspended from service for a period of 15 days. The only question involved in this case is whether or not the evidence supports the finding of the investigation and the resulting punishment of 15 days' suspension. The transcript of the investigation discloses that the gang foreman testified that Claimant was asleep; that he had blown a steam whistle several times and did not get a response from Claimant; that he shined a light in his face and Claimant did not respond; and then he hollered and asked Claimant if he had heard the steam whistle. This testimony was sharply contradicted by Claimant, who stated that he was not asleep and did not hear the whistle because of other noise occurring in the yard at the time the steam whistle was supposed to be blowing. At conclusion of the investigation, all parties, the Organization and Claimant, stated that they had no objections to the manner in which the investigation was conducted. This Board will follow the finding in Second Division Award 4981 (Weston). This award upheld a 15 day suspension for sleeping on the job by saying:

"It is not this Board's function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible, though controverted, evidence."

This Board finds that sleeping on duty is subject to discipline, and that unless it can be shown that the investigation was handled in an unreasonable, arbitrary or capricious manner, its findings will not be disturbed. We do not find that 15 days' suspension is unreasonable in view of prior awards. Award 3613 upheld at 30 days' suspension for sleeping on duty; Award 1541 upheld dismissal of an employe for sleeping on duty. Under the record ad-

duced in this case, the action taken by Carrier as a result of the investigation will not be disturbed.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 23rd day of April, 1969.