



Award No. 5795

Docket No. 5662

2-SCL-FO- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Firemen & Oilers)**

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current and controlling agreement, the Seaboard Air Line Railroad Company, now merged with the Atlantic Coast Line Railroad Company, and known as the Seaboard Coast Line Railroad Company, unjustly suspended Laborer Mark Parham from service on March 3, 1967, and unjustly dismissed him from service on April 14, 1967.
2. That accordingly, the carrier be ordered to restore Laborer Mark Parham to service with all earned rights unimpaired and compensated for all time lost since March 3, 1967.

EMPLOYEES' STATEMENT OF FACTS: Laborer Mark Parham, hereinafter referred to as the claimant, was employed by the carrier on May 14, 1946 as a Laborer at Durham, N. C., and worked there continuously until he was suspended from service on March 3, 1967. His assignment was 7:00 A.M. to 4:00 P.M. with 1 hour for lunch from 11:00 A.M. to 12:00 Noon, Monday through Friday, with rest days Saturday and Sunday.

After eating his lunch between 11:00 A.M. and 12:00 Noon at the usual place by the warm stove in the store room on March 3, 1967, the claimant became drowsy and dropped off to sleep.

At 1:05 the same day, the claimant was awakened and accused by car inspector, Leroy Ricks of sleeping on the job and failing to do his work, and then suspended him. The laborer's position was subsequently filled by a carman helper named Denson.

When the local chairman finally became aware of the discipline, he telephoned Car Inspector Ricks at 8:30 A.M., March 6, 1967 to request information concerning the action taken against the claimant, and requested that the investigation be postponed pending such time as the local chairman could contact the general chairman. At 1:30 P.M. the same day, Car Inspector Ricks telephoned the claimant to come to the shop and talk to the assistant master mechanic. When the claimant arrived at the shop he was accosted by

Examination of the investigation transcript leaves no doubt Mr. Parham was asleep while on duty on March 3, 1967. Three witnesses positively testified that he was, and claimant admitted the fact. The transcript also reveals this was not the first occasion on which Mr. Parham had been guilty of this same offense.

The hearing record further is replete with testimony substantiating Mr. Parham's dereliction of duty, over a period of several years, and his indifferent attitude toward his work. It proves conclusively carrier's position regarding Mr. Parham's work and attitude had been made crystal clear to him; that he understood carrier's position; and that repeated efforts made by carrier to bring about an improvement were without success although leniency was granted again and again as a consideration to Mr. Parham.

The record in this case further shows that handling of this dispute on the property turned to a request for Mr. Parham's reinstatement on the basis of leniency. Such request is, of course, indicative the employee was not unjustly disciplined, and amounts to a plea that he be given yet another chance, on the basis the discipline administered has served its purpose. But how many times must carrier give this claimant another chance, on the assumption he has learned his lesson and will make a good employee?

As this record shows, corrective measures were applied and leniency granted time and again to Mr. Parham, but he continued to sleep during working hours, cause delays to train movements by his ineptness and indifference, and subject carrier to overtime payments when other employees were required to perform his work. Various invalid excuses were advanced to defend claimant's derelictions in this case, but no evidence has been presented to carrier to show a rehabilitation of his attitude toward performance of his required work.

In this connection, attention is directed to denial Award 3933 of the Second Division; also, Awards 3430 and 3874. The National Railroad Adjustment Board has consistently ruled that reinstatement in such cases is a managerial prerogative. Further, the board has held it is without authority to order reinstatement of a dismissed employee as a matter of leniency, and that it is not its function to substitute the board's judgment for that of carrier in disciplinary matters, unless the record discloses carrier abused its discretion. That, carrier submits, did not occur in this instance.

In summary, carrier submits that claimant was afforded a fair and impartial hearing; the evidence sustained the charges against him; his prior service record was properly considered by carrier in arriving at the discipline to be assessed; and the penalty imposed was neither founded in bad faith nor excessive.

There is no basis for a sustaining award in this dispute, or for ordering the reinstatement of claimant under any circumstances, and carrier respectfully submits this claim should be denied.

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.

The record in this case contains sufficient credible evidence to support the Carrier's finding of guilty as charged. It is also shown that the procedural rights of the accused, including the right to a fair and impartial investigation (trial), were fully observed.

The Board has noted, however, that the claimant's personal record of eighteen years' service with the Carrier is an excellent one demonstrating his loyalty and dedication as a dependable and capable employee. These qualities were also testified to by supervisory officials at the investigation. We are of the opinion that the Carrier should have given more weight to Claimant's record as a mitigating factor in assessing the discipline imposed. It appears to the Board that dismissal from service, in the light of the employee's long and exemplary record, was harsh and excessive.

Accordingly, the Board finds that Claimant be reinstated in the Carrier's service with all his contractual rights unimpaired but without pay for time lost.

A W A R D

Claim disposed of in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary