



Award No. 6302
Docket No. 6177
2-MKCSJA-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph E. Cole when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)
MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman R. D. Enochs was unjustly dismissed from service of the Milwaukee-Kansas City Southern Joint Agency, Kansas City, Missouri on October 31, 1969.
2. That accordingly, the Carrier be ordered to restore R. D. Enochs, Carman, to service, with his seniority unimpaired and pay for all time lost, as a result of his dismissal.

EMPLOYEES' STATEMENT OF FACTS: Carman R. D. Enochs, hereinafter referred to as the Claimant, had been in the service of the Milwaukee-Kansas City Southern Joint Agency, hereinafter referred to as the Carrier, for approximately nineteen (19) years, and on October 23, 1969 was working as a Car Inspector at Kansas City, Missouri.

Claimant was instructed by letter dated October 23, 1969 to report to the office of Superintendent at East Kansas City, Missouri, at 9:30 A. M. Tuesday, October 28, 1969 for formal investigation to determine facts and place responsibility in connection with:

"your alleged sleeping in Milwaukee-Kansas City Southern Joint Agency truck JA-10 while on duty as Carman at West Knoche on Thursday, October 23, 1969." (Exhibit 1, page 2)

Investigation was held at 9:30 A. M., Tuesday, October 28, 1969, as scheduled by transcript of hearing which is submitted as Exhibit.

Claimant was dismissed from the service of Carrier by letter dated October 31, 1969, dismissal to become effective October 31, 1969. (Exhibit 2)

Claim was filed with the Carrier on December 27, 1969 (Exhibit 3) and subsequently handled with each officer of the Carrier, so designated to handle such dispute including the highest designated officer, and each have declined

Q. Did you observe a sandwich or any food in the truck?

A. No sir.

Q. Did you observe a cup of coffee sitting on the dash?

A. No."

The evidence clearly shows that Enochs was alone in a prone position and asleep in truck JA-10, 3:40 A. M. to 4:05 A. M., during which time no one approached, entered or left said truck. In other words, the evidence does not support the Employees' contention that Enochs was eating his lunch during this time, nor is there any evidence to show that Carman Oulds delivered a lunch to Enochs between 3:40 A. M. and 4:05 A. M.

Claimant has never been a desirable employee and has been censured and disciplined on a number of occasions. As shown in Carrier's statement of facts he has failed to handle his personal affairs properly resulting in at least 10 garnishments and wage assignments. He has been admonished for drinking and sleeping on duty and in 1969 was caused to serve 60 days suspension for drinking and being quarrelsome and belligerent. While his past record was not considered in arriving at his guilt in the instant case, it was considered in arriving at the measure of discipline assessed. We respectfully request that Carrier's action be sustained.

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.

1. Rule 30 L of the agreement has been fully complied with.
2. A fair and timely hearing was held.
3. There is adequate evidence in the record to support the allegations.
4. Sleeping on duty is an offense for which an employee may be dismissed.

(a) Leniency may be shown by the employer, but does not have to be shown.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.

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