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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6372
Docket No. 6218
2-L&N-MA-'72

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

Parties to Dispute: { System Federation No. 91, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Machinists)
{
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (a) That under the current agreement, Machinist-Helper H. A. Pinkston, Hereinafter called the Claimant, was unjustly dismissed by the Louisville & Nashville Railroad, hereinafter called the Carrier, on November 9, 1970.
- (b) That accordingly, the Carrier be ordered to reinstate the Claimant with his former seniority and all other rights unimpaired and with pay for all time lost since his dismissal on November 9, 1970.

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.

Claimant was in service for a little over one and one half years. On the night in question he was assigned as a machinist-helper to assist a machinist in making repairs to a diesel locomotive. His shift was from 11 P.M. to 7 A.M. At 1:15 A.M. the Department Foreman found claimant seated in the cab of the locomotive. The Department Foreman insists that he was asleep. Pursuant to Rule 34 of the Agreement, claimant was notified in writing that he was charged with being asleep, that a hearing would be held and that he should be present with witnesses and a representative if he so desired.

At the hearing, the Department Foreman testified that as he passed the locomotive his attention was attracted to claimant because his head was down and chin resting on his chest. In great detail, the Department Foreman testified that he was in a position close enough to see that claimant's eyes were closed. The Foreman watched him for three to four minutes. He then printed on a card, "I am asleep" and placed the card in the claimant's lap. In about fifteen to twenty seconds, claimant raised his head. The Foreman asked what the card said. Claimant read the

card and said he was not asleep. When asked where the machinist was he said that the machinist was gone about thirty minutes. Claimant was asked the time, looked at his watch and answered, "1:15."

The Department Foreman immediately called claimant's foreman and told him that he found claimant asleep. It was learned that the machinist had injured his finger about 11:45 P.M., and left to have it treated by the foreman but had not returned to the locomotive. Claimant emphatically denied that he was asleep. He testified that he did not see the Department Foreman watching him because he was wearing dark glasses and they obstructed his side vision. He claimed also that he protested that he was not asleep as soon as the card was put into his lap. Claimant admitted that he had previously been reprimanded for being asleep on the job on one occasion but no formal record was placed in his file.

This is a case of one man's word against another. The Department foreman's statement was detailed and specific. The charge was not an afterthought but was told immediately to claimant's foreman when it happened. The report was written up at the time and given to the division manager at the end of the shift. Claimant was in error when he stated that the machinist was gone thirty minutes because it was developed at the hearing that one and one half hours had passed during which claimant did nothing but sit in the cab. Vigorous questioning by claimant's representative confirmed every detail of the Department Foreman's statement of the events.

Prior Awards of this Division have made it clear that it is not the function of this Board to substitute its judgement where there is conflicting testimony so long as there is substantial evidence to support the result of the hearing. If we were to decide every case in favor of a claimant where it was one man's word against another, all that would be required would be a denial of the charge. The hearing in this case was a fair one and every opportunity was given to develop the facts. Claimant simply could not justify doing nothing for one and one half hours except perhaps to doze off in the cab. The charge was solely that he was sleeping and on this one question the combination of events do not leave room for this Board to determine that the carrier's decision was arbitrary or capricious.

Prior awards have also made clear that sleeping on the job is an offense which leads to dismissal. This was referred to by claimant's representative during the hearing. Prior Awards have established the rule that this Board will not overrule the carrier in deciding the degree of discipline to be imposed unless the discipline is obviously arbitrary and in bad faith. In this case there was a prior reprimand for sleeping on the job. A function of this Board is to develop a pattern for guidance on the property. This is accomplished by being consistent except where the facts require a different result. This case is not such an exception.

Awards of the Second Division referred to are: No. 1323, 2996, 3430, 4629, 4981, 6196, 6240, and 6281.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Wilken
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1972.