

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it improperly discharged Machinist D. D. Melvin from the carrier's service on September 27, 1973, as a result of an investigation held on September 14, 1973.
2. That accordingly the Norfolk and Western Railway Company be ordered to restore Machinist Melvin to service with all seniority, vacation, insurance and all other rights and benefits unimpaired and to properly compensate him for all wage loss retroactive to date of discharge.

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 Claimant was charged with sleeping on duty and not performing his assigned work at about 5:45 A.M. on September 8, 1973. A formal investigation of the charge was held. As a result of the investigation the Claimant was dismissed from service.

The Organization contends that the Claimant was not given a fair and impartial hearing because of obstruction of cross-examination by the conducting officer. We find that the hearing officer committed error by interrupting the cross-examination of Foreman Dubree concerning possible bias on the part of the Foreman towards the Claimant. An investigation's primary and paramount purpose

is to develop all the pertinent facts of a case. The attitude of an accuser towards the accused is most fundamental to the fair assessment of testimony and the reaching of the true facts. We caution that the parties should be allowed considerable latitude in cross-examining witnesses, in seeking to challenge credibility as well as in seeking to reveal conflicts in testimony. We find, however, in the present case that the error is not prejudicial in that in addition to Foreman Dubree's testimony, Assistant Foreman B. J. Schnetzler testified as well that he observed the Claimant sleeping. Claimant's own testimony corroborates that he was asleep.

Arguments about the different roles of Foreman Dubree were never discussed or handled on the property and are not properly before us.

We find that the Claimant is guilty of the charges. However, from the narrow circumstances contained in this record, we find that the discipline of dismissal is excessive. We order that the Claimant be restored to service without back pay, but with all other rights unimpaired; the discipline is to be made part of his record. We hope that the Claimant has developed a maturity and value concerning his job while out of service. We assert to the Claimant that an awareness of the need for proper rest and on the job diligence is mandatory.

A W A R D

Claim sustained to the extent indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1975.