

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

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of W. R. Schultz and A. J. Ritter, Jr., when they were removed from service on October 5, 1973, as a result of an investigation held that same date.
- (2) That, therefore, Mr. Schultz and Mr. Ritter be restored to service with all rights and privileges and benefits.
- (3) That they be protected from loss due to the improper removal from service account the loss of the aforementioned rights, privileges and benefits.
- (4) That they be compensated for all lost wages, including overtime, at the appropriate rate of pay, and
- (5) That they be further compensated interest at a rate of 8% per year, for lost wages and/or other monetary losses.

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.

Following an investigation held on October 5, 1973, Claimants, W. R. Schultz and A. J. Ritter, Jr., Electrical Trainees employed by Carrier on December 2, 1972 and May 22, 1972, respectively were dismissed from service for sleeping and inattention to duty while working at the 8th Street Coach Yard on September 28, 1973. Petitioner, on behalf of Claimants, appeals herein their dismissal on the grounds of insufficient evidence to support

the charges and arguendo excessively harsh discipline for the offense involved. The appeal for reversal of the discipline, reinstatement and restitution was denied on the property and comes now to our Board for adjudication.

We turn first to the contention that the charges against Claimants were not supported by substantial material and probative evidence on the record. A careful review of the transcript of the investigation shows that Claimants were assigned to work hours of 12:00 Midnight to 8:00 A.M. on September 28, 1973. At approximately 2:00 A.M. Claimants' supervisor could not find these two employees anywhere in their assigned work area and, together with three other supervisors commenced a search for Claimants. After nearly one and one-half hours they came upon Claimants and another man, a hobo, stretched out with their eyes closed in chair car Number 4573 at the North end of the Yard. Claimants insist that they were not asleep but merely resting and waiting for their lunch break to begin. Claimants admit that they had absolutely no function to perform in Car 4573 but assert that all of their work was completed on other cars. Each of the four supervisors testified that he stood in the car for several minutes and shined a flashlight on the three persons reclining in the car, including Claimants. Each testified that the three had eyes closed and that Claimants had pillows behind their heads. Each testified that when one of the foreman shouted at the hobo, then Claimants opened their eyes, placed their pillows on the rack, put on their hard hats, picked up their lunch buckets and left the car.

Upon consideration of the foregoing facts and the entire record we are **constrained to conclude that substantial record evidence supports a** finding that Claimants were asleep and inattentive to their duties on the date in question.

Petitioner also maintains that even if Claimants were asleep a dismissal from service is inappropriately severe discipline in this case. We find persuasive the plethora of awards cited by Carrier for the proposition that sleeping on the job is not uncommonly a dischargeable offense in the railroad industry. See Awards 1541, 1795, 4629, 6302, 6372 and 6459. Claimants were employees of less than one year's seniority with Carrier and their service records do not indicate a history of faithful performance of duties. There are no mitigating circumstances on this record to warrant substitution of our judgement for that of Carrier. In all of the facts and circumstances we cannot say that the discipline was arbitrary, unreasonable or excessively harsh. We shall deny the claim.

A W A R D

Claim denied.

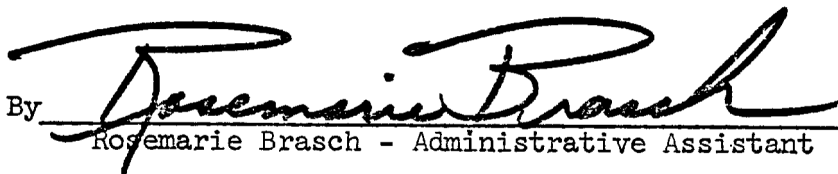
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Award No. 7006
Docket No. 6845
2-AT&SF-EW-'76

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of February, 1976.