

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

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C, I. O.
((Carmen)
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That Carrier unjustly assessed Carman W. Tonelli a ten (10) day deferred suspension on July 22, 1974, as a result of investigation held May 21, 1974.
2. That Carrier be ordered to rescind discipline assessed Carman W. Tonelli by removing the ten (10) day deferred suspension from his personal service record.

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.

Claimant was assessed a ten day deferred suspension for being asleep on duty. There was testimony by two Carrier officials that they observed Claimant for a period of approximately 20 minutes from 2:40 a.m. to 3:00 a.m. with his eyes closed leaning back on the window on the driver's side of a vehicle.

Claimant contended that he was not asleep. Rather he testified that he was drowsy, nauseated and his eyes hurt. There was testimony from other witnesses to the effect that the vehicle in which Claimant was sitting had a defective exhaust system and gave off gas fumes. There was other testimony, however, that the window on the passenger side was rolled down.

Despite the conflict in testimony, Carrier has presented substantive evidence of probative value that supports its action. As we have said many times before, it is not our province to resolve conflicts in testimony.

A W A R D

Claim denied.

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 15th day of October, 1976.