

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That the Carrier's action in dismissing Laborer Paul E. Barnett from its service on May 23, 1975, was indeed harsh, wrong, improper, out of proportion, excessive and constituted an abuse of discretion.
2. That accordingly, the Houston Belt & Terminal Railway Company compensate Laborer Paul E. Barnett at the pro rata rate of pay for each work day beginning May 23, 1975, until he is reinstated to service and in addition he receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.
3. Claim is also made for Laborer Paul E. Barnett for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Barnett an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 dismissed from Carrier's service for sleeping on duty between 2:45 a.m. to 3:10 a.m. on May 22, 1975. Pursuant to the provisions of Article 9 of the Agreement between the parties, Claimant requested and received a hearing. The hearing was held on June 5, 1975. On June 11, 1975 Carrier's initial decision to dismiss was upheld.

After review of the record, including the transcript of hearing, the Board finds that there was substantive evidence of probative value to support the finding by Carrier that Claimant was sleeping on duty. The Board further finds, however, that a dismissal, under the circumstances, was excessive. Accordingly, Claimant shall be restored to Carrier's service with seniority unimpaired, but with no pay for time lost.

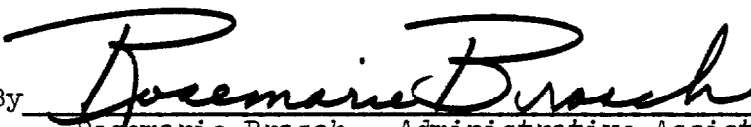
A W A R D

Claim disposed of per findings herein.

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 6th day of January, 1978.