

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

- (1) That the dismissal of Machinist J. L. Marshall was improper and unsupported by either the rules of the controlling agreement or by facts developed at the investigation.
- (2) That, accordingly, Machinist J. L. Marshall be returned to service with seniority unimpaired, that he compensated for all wage losses and made whole for any loss resulting from his dismissal including but not limited to credit for vacation qualifying time, full retirement credit, medical expense, dental expense commencing March, 1976 payment for any life insurance benefits due him or his beneficiaries, and all other losses resulting from his dismissal.

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 discharged following a hearing held on November 20, 1975 where he appeared under the charge of being in a reclining position and asleep in the cab of a locomotive while on duty on the date of November 7, 1975.

Review of the record establishes that Claimant received a fair and impartial hearing and that he was deprived of none of his substantive rights under the Agreement. More than substantial evidence existed establishing the charge against Claimant. It is clear that he was in a reclining position on unit 3735; that his eyes were closed; and that he was asleep for a considerable period of time.

Considering the quantum of discipline assessed, the Board reviewed several previous decisions which have recognized that in certain cases, sleeping on duty is a serious offense which can justify discharge. In this case, however, we find that Claimant had been employed as a Machinist by Carrier on January 25, 1973 and up until the date of his discharge, was never previously disciplined by Carrier for any infraction. He has now served a suspension of over two years, and the Board will now reinstate him without pay for time lost. It is to be presumed that Claimant has learned a valuable lesson and the Board cautions him that any such conduct in the future could lead to very serious consequences.

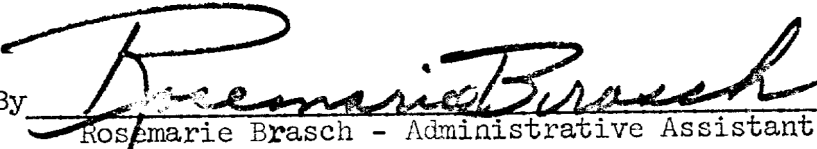
A W A R D

Claim sustained to the extent indicated in the Findings.

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 11th day of April, 1978.