

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Darrell Nelson was unjustly dismissed from service effective April 23, 1976.
2. That, accordingly, the Carrier be ordered to restore him to service with all seniority rights unimpaired and with pay for all time lost retroactive to aforesaid date.

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 employees 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 dismissed from service for falsifying time on duty on March 25, 1976, and sleeping on duty or assuming the position of sleep on March 29 and April 1, 1976. We find nothing in the record to indicate that the Carrier's disciplinary action was not appropriate. Claimant was notified to attend a hearing on April 8, 1976 but failed to appear nor was he represented. Claimant cannot void the implementation of a proper hearing by failing to appear. The Organization points to several apparent technical oversights on the Carrier's part as a defense against its actions. While there may be merit to such assertions, they are not of a nature to prejudice the Carrier's right to assess and administer discipline. Based on consideration of all factors involved, we do not find merit to the Organization's defense in this case. While affirming the Carrier's actions, we note that the record is devoid of any notice of discipline to the Claimant. Notwithstanding the Carrier's salient arguments that this issue (lack of notice of discipline) was not timely filed and, indeed, that the first appeal in this case may not have been timely, we direct that the record be made whole by addition of such a notice of discipline.

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Award No. 7564
Docket No. 7480
2-CR-EW-'78

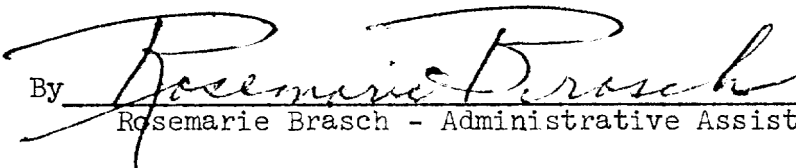
A W A R D

Claim is denied; Carrier is obliged to correct the record as set out 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 16th day of June, 1978.