

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

Parties to Dispute: { System Federation No. 162, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated Rule 34 of the controlling agreement when they unjustly assessed Carman T. J. Teamer's personal record with sixty (60) demerits on May 23, 1977, following investigation held on May 19, 1977.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to remove the sixty (60) demerits from Carman Teamer's 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 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.

Following an investigative hearing, Claimant's discipline record was assessed 60 demerits "for sleeping while on duty as Carman, Englewood Yard, at approximately 2:25 A.M., April 29, 1977, which is a violation of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company."

General Rule 810 provides in part:

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping."

The Organization raises two threshold issues: first, that the Carrier official who cited Claimant for investigation was also the officer assessing

the discipline following the investigation, thus denying the claimant a "full and impartial investigation" as required by Rule 34; and second, that the Agreements provides no rule for assessment of demerits on an employee's record.

As to the first point, the Board finds that the procedure followed in this instance did not deny the Claimant his full rights under Rule 34. Numerous previous Awards have dealt with the multiplicity of role question. To find that a claimant's rights have been impaired, such awards have relied on more than the technicality of the participation of a Carrier officer in more than one role. In this instance, a different official conducted the hearing and the witnesses were those Carrier supervisors directly involved in the incident. No impairment of the right to a full defense and an impartial hearing was involved in this instance.

As to the second point, the Organization offers no reasoning or support for its objection to the use of disciplinary demerits in lieu of a suspension or removal action. Carrier correctly asserts that the Agreement does not restrict it as to a method of assessing disciplinary penalties. The record is undisputed that this Carrier has employed the demerits system for some time.

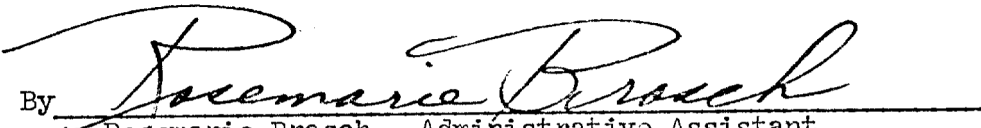
As to the question of whether the Claimant was guilty of the offense charged, two Carrier witnesses testified with consistency and certainty that they had observed the Claimant asleep in the cab of a truck. Claimant's explanation that he was merely moving across the truck seat to get out is self-serving. The Board finds no reason to question the Carrier's resolution of this conflict against the Claimant. Nor is there any demonstration of discriminatory treatment against the Claimant in exercising disciplinary measures in the face of a violation of Rule 810, satisfactorily proved through a fair and impartial investigation.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of June, 1979.