

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Carrier improperly dismissed Machinist A. G. Acosta (hereinafter) referred to as Claimant) from service on August 10, 1977.
2. That Carrier be ordered to compensate Claimant for all wage loss from August 10, 1977, until March 6, 1978, when he was returned to service without prejudice.

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, and subsequently reinstated by Carrier without pay for time lost on February 23, 1978. The claim for compensation during the period from his August 10, 1977 discharge to the reinstatement date noted above is in issue before us.

The basis for Claimant's discharge was his indifference to duty and sleeping on duty on July 9, 1976. There is no question but that Claimant was given an order to perform Level One Service on a locomotive consist by his foreman at approximately 11:30 a.m. on this date. Although the Foreman, Mr. Murphy, did not advise Claimant that the consist was to be used for train EAUSY just a few hours subsequent in time, it is clear from the record that Claimant's indifference to duty, by sleeping on the cab of locomotive BN 6800, was proven. Foreman Murphy twice observed Claimant sleeping - the first time at 12:30 p.m. and the second time at 12:50 p.m., when he returned, mounted the cab and had to awaken him by shouting to him. We have previously held, many times, that sleeping on duty is a serious offense.

Given the seriousness of this offense, plus Claimant's previous service record with Carrier (which included a warning for sleeping on duty and dismissal for dishonesty), we cannot conclude that the actual disciplinary suspension served by Claimant in this case was excessive or an abuse of managerial prerogative. Finally, we find the hearing was fairly and impartially conducted and Claimant was not denied any of his substantive rights under the agreement.

Accordingly, we find no basis to alter or set aside Carrier's action here and the claim will be denied.

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 1st day of August, 1979.