

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. 117, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Western Pacific Railroad Company

Dispute: Claim of Employees:

That Carman D. R. Edwards was unjustly discharged from the service of the Western Pacific Railroad Company in violation of the rules of the Controlling Agreement by letter on February 11, 1977 as a result of investigation held February 8, 1977.

That accordingly, the Western Pacific Railroad Company be ordered to reinstate Carman D. R. Edwards to service with pay for all time lost, with all rights and fringe benefits unimpaired.

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 subject to a properly conducted investigative hearing concerning charges of:

1. "unauthorized absence on time card day January 25, 1977 and January 30, 1977"
2. "sleeping during your regular tour of duty on time card day of January 27, 1977"

As to the second charge, the Claimant admitted during the investigative hearing that he had been sleeping during duty hours. His excuse concerning a painful ankle is insufficient, since he made no effort to advise his supervisor of any such incapacity.

When this is weighed against the Claimant's disciplinary record, no exception can be taken to the Carrier's decision to terminate his services on this occasion. This record shows eight admonitory letters in less than two years, including five for the same offense of sleeping on duty. In addition, the record shows a removal from service and leniency reinstatement only four months previous to the current disciplinary action.

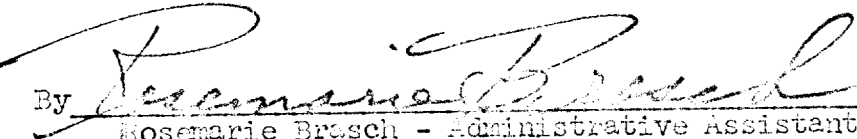
In view of this, review of the first charge is immaterial, although it appears that the Claimant did report off on the two days in question but failed to follow the procedure with which he was properly expected to be familiar.

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 September, 1979.