

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Union Pacific Railroad Company

Dispute: Claim of Employee:

1. That under the terms of the Agreement, R. D. Maxwell was unjustly dismissed from service of the Union Pacific Railroad Company on May 19, 1977.
2. That, accordingly, the Carrier be ordered to reinstate claimant to his former position with all service rights, seniority and pay for all time lost from Carrier service retroactive to December 27, 1973.

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.

Claimant was charged with violating Rules "B" and "702A" of Form 7180, Rules and Instructions of the Motive Power and Machinery Department after he was found sleeping in a locomotive cab on April 17, 1977 at approximately 4:20 A.M.

An investigative hearing was held on May 5, 1977, pursuant to Agreement Rule 37, at which time he was found guilty of the charges and dismissed from service effective, close of shift, May 19, 1977. This disposition is now before us.

In reviewing this case, the Board finds that the investigative transcript solidly supports the charges. Claimant was discovered by two (2) supervisors in a reclining position and asleep in the Engineer's seat of locomotive SP9401, contrary to Carrier's performance requirements. The infraction was confirmed by the local chairman's acknowledgement that claimant did not deny falling asleep.

Inasmuch as this Board has found sleeping on duty to be a dismissable offense, we find that claimant's past employment record and the apparent non volitional nature of his conduct warrants a penalty modification.

While we do not countenance this type of behavior and, in fact, consider it to be a serious dereliction of duty, we believe that claimant's satisfactory work record and the particular circumstances of his infraction justifies our determination.

His dismissal should serve as sufficient and commensurate punishment for this first time offense and thus reflect a more judicious application of progressive disciplinary principles.

We will restore him to service with all rights unimpaired, but without back pay and expect that he will diligently observe the rules and regulations governing his employment.

A W A R D

Claim sustained to the extent expressed in the opinion.

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 31st day of October, 1979.