

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
{
{ Fort Worth and Denver Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement and the Fort Worth and Denver Railway Company Schedule of Rules, the Carrier wrongfully suspended Machinist Richard J. McGuigan from service a total of 24 days and unjustly dismissed Claimant effective March 7, 1978.
2. That Carrier compensate Machinist Richard J. McGuigan for payment of all wages lost while withheld from service during the period February 10, 1978 to present and for other benefits during this period, including credit for time lost during this period for vacation and other rights.

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 dismissed from service on March 7, 1978 following an investigative hearing held on February 21, 1978 at Fort Worth, Texas to determine his responsibility in connection with his alleged sleeping while on duty in Caboose BN 12117 at approximately 3:15 A.M. on February 10, 1978.

This disposition was appealed on the property pursuant to Agreement procedures and is presently before us.

In reviewing this case, we must first consider Claimant's procedural objections regarding the propriety of the pre-investigation suspension, service of the disciplinary notice and presumptive denial of due process rights.

Upon the record, we find no basis for concluding that he was improperly treated or afforded an investigative trial that was unfair. To the contrary, we find his general demeanor toward the disciplinary and investigative process

to be somewhat uncooperative. Claimant was provided an investigative trial that comported in all essentials with the requirements of Agreement Rule 31.

Similarly, when we review the investigative transcript, we find no evidence that he was not sleeping in the caboose. The two carrier officials who found him sleeping provided consistent testimony on the fact specifics of this incident which was not effectively rebutted by his counter assertions. He was sleeping on duty in contravention of Carrier's safety rules, particularly Rule 673 and this is a serious offense in this industry. This Rule states:

"Employees must not sleep on duty. Lying down, or in a slouched position, with eyes closed or with eyes covered or concealed will be considered as sleeping."

We are mindful that the various Divisions of the National Railroad Adjustment Board have invariably upheld the disciplinary penalties imposed for this type of infraction and thus we do not find Carrier's penalty, in this instance, to be arbitrary or capricious. (See, for example, Second Division Awards 4123 and 4629.) But we find sufficient justification from the record to conclude that leniency is warranted herein that judicially observes the principles of corrective discipline. We will, accordingly, reinstate him to his position, but without back pay for the time lost and admonish him that any recidivist behavior will not be looked upon kindly by this Board.

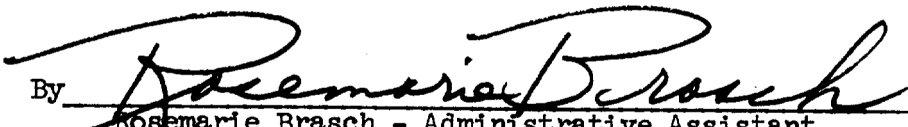
A W A R D

Claim sustained to the extent expressed herein.

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 2nd day of April, 1980.