

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
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{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when Electrician Helpers Bruce Hodges and Louis J. Kinnon were unjustly assessed the following discipline: fifteen-day deferred suspension with one (1) year probationary period, effective October 13, 1977.
2. That, accordingly, the Carrier be ordered to withdraw the discipline given the abovenamed Electrician Helpers by expunging this incident from their records.

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 employees 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.

In the testimony of the hearings, the claimants fail to produce evidence and proof to expunge their records for the following reasons:

Time: Both sides failed to establish the lunch period time. Therefore, although there was a degree of doubt as to the lunch period, based on the testimony as a whole, it is the Board's opinion that the men in question were not on their lunch period when Mr. Kelly observed the incident.

Transcript: Mr. Hodges' testimony contradicts itself. Mr. Hodges does not maintain he was on lunch but instead states he was not performing services since he was out of work.

Mr. Hodges disputes his own testimony of standing up when he therefore states he was sitting down and talking. However, Mr. Savord states in his testimony that Mr. Hodges was seated rather than standing. Contradictory testimony exists. It is not observed anywhere in testimony that malicious intent existed on the part

Mr. Kelly, the Divisional Mechanical Supervisor. It is the responsibility of an employee gainfully employed to seek out the work if none existed; this Mr. Hodges did not do. Therefore, his claim is denied.

Likewise with regard to Mr. Kinnon, he failed to properly protect his assignment because he was found sleeping between the hours of 4:30 A.M. and 5:00 A.M. on August 9, 1977. Mr. Kelly stated, "I peered into Unit 97C where I found Mr. Louis Keenon (sic) sleeping on the firemans seat with his feet propped on the window sill. I crossed over to the middle platform and peered into Unit 2059 and saw two individuals in the prone position and entered the cab from the door on the firemans side. I shook the individual and raised my voice. The individual I shook was in the prone position on the firemans side. He jumped up and at the same time the individual on the engineers side who was later determined to be Mr. Savord, jumped up and asked what was happening. I took the name of the individual (sic) I shook as being Mr. Hodges I recorded that time to be 4:46 A.M."

"Q 29 - You indicated Mr. Kinnon was asleep. How did you determine that? A - I determined sleep as being relaxation of muscles to the point to lose control. When I struck my head into the window of the engineers side, had Mr. Kinnon been in contrl (sic) of his muscles he surely would have seen me and it was clear that his eyes were closed.

Q 30 You could see that his eyes were closed. A - Absolutely, the lighting in the building was good.

Q 34 In neither case at this particular time was Mr. Kinnon or Mr. Hodges performing any service for the carrier. A - Absolutely no services were being performed."

Therefore, based upon the evidence, testimony of this case and the case as a whole, the claim is 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 - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of October, 1980.