

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer Winfred Flemons was unjustly disciplined in that he was given a letter of reprimand and placed on one years probation.
2. That accordingly the Illinois Central Gulf Railroad be ordered to remove from Laborer Flemons' file all record of the reprimand and the one year probationary period.

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, a laborer, was properly notified to attend a hearing on November 9, 1978, to investigate a charge that he had been sleeping while on duty on October 24, 1978. After the hearing, the carrier permanently placed a letter of reprimand in his personal file and also imposed a one year probation period on the claimant. The organization urges us to expunge the letter of reprimand and to cancel the probationary period.

The organization contends that the charge was not proven by substantial evidence because there was only one witness to the alleged infraction. However, the organization argues that the carrier improperly used the claimant's prior work record to buttress a weak charge. The carrier asserts that the evidence sufficiently supports proof of the charge and the work record was used only to determine the penalty to be assessed.

The claimant conceded at the hearing that he was in the locker room, away from his normal work area, during regular working hours on October 24, 1978. The claimant admits that he failed to return to work at 1:55 p.m. when his break ended. Also, while formulating a question to ask a witness, the claimant commented, "This particular day that I was caught sleeping in the locker room, appeared to

be sleeping in the locker room..." The claimant's admissions coupled with the foreman's testimony that he had been searching for the claimant since 1:35 p.m. and found him at 2:15 p.m. with his head down in a sitting position in a secluded portion of the locker room constitute substantial evidence to prove the charge. While later in the hearing the claimant appeared to retract some of his earlier admissions, it simply is not this Board's province to weigh the credibility of witnesses. The hearing officer, who directly observed the demeanor of all the witnesses, could properly conclude that the claimant was asleep at 2:15 p.m. when he should have been performing his assigned tasks.

In the notice of hearing dated October 24, 1978, the claimant was formally warned that his prior work record would be reviewed before discipline was assessed. At the investigation, the hearing officer specifically ruled that the claimant's record would only be used to determine the measure of discipline. Given the claimant's poor prior work history, we cannot say the letter of reprimand and the one year probationary period are excessive or arbitrary penalties. Therefore, we uphold the carrier's assessment of discipline.

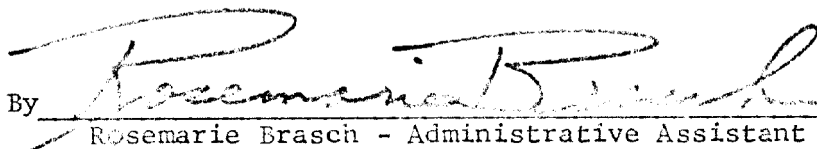
A W A R D

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 7th day of January, 1981.