

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer W. P. Alcendor was unjustly dismissed from service of the carrier following trial held on September 26, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned W. P. Alcendor whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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.

The Claimant, a laborer, with twenty-two months of service was dismissed in all capacities by letter of October 16, 1979, wherein the offenses outlined were:

- "1. Out of assigned area 1:50 A.M. to 1:55 A.M. August 30, 1979, at Harrisburg Locomotive Terminal.
2. Loitering in a cab of Conrail locomotive 1:50 A.M. to 1:55 A.M. August 30, 1979, at Harrisburg Locomotive Terminal.
3. Sleeping while on duty 1:50 A.M. to 1:55 A.M. August 30, 1979, at Harrisburg Locomotive Terminal."

The investigation was held as scheduled on October 16, 1979. The Organization protests the dismissal as arbitrary, capricious, unjust, and an abuse of managerial

discretion. The record shows that Shop Superintendent Stayer instructed Foreman Guyer he wanted the roof washed on #6248. Foreman Guyer looked for the Claimant for approximately twenty minutes in order to assign him to the work. Thereafter, Guyer twice had Claimant paged. Guyer informed his superiors that he could not find the Claimant. Subsequently, General Foreman Reeser located the Claimant in the cabin of Locomotive 6159, which was on the west 5 track. The Claimant's assigned work was on the cabin track, a distance of some fifty yards from where he was found. Reeser motioned to Foreman Guyer and Shop Superintendent Stayer to come over to the engine. All three stood outside the cab and heard the Claimant snoring. After a couple of minutes, they entered the cab and observed Claimant snoring. He awoke at 1:55 A.M.

The Organization argues that, on the night in question, there was insufficient work at the cabin track. By sitting in Locomotive 6159, Claimant thereby positioned himself in an area where he could see the cabin track and perform any duties should they arise. While it is factual there was insufficient work on the cabin track, we agree with Carrier's conclusion that Claimant's explanation for his presence in the locomotive cab is self serving. The Claimant was fifty yards distance from his job assignment, an area clearly outside his work area. His testimonial admissions are a tacit acknowledgement of loitering. The substantial weight of evidence supports the Carrier finding that the record established Claimant was sleeping.

On two prior occasions, this Claimant received discipline for assuming an attitude of sleep while on duty. Carrier contends this prior discipline has not had a corrective impact. We agree and note the record clearly established Claimant believed he was justified in being away from his assigned area because he had no immediate work assignment. This Board is bound by the evidence presented. A review thereof affirms Carrier properly concluded Claimant was out of assigned work area, loitering, and sleeping the morning of August 20, 1979.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.