

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated the controlling agreement when they unjustly assessed Car Repairman T. Rogowsky a thirty (30) calendar day suspension as a result of an investigation held on June 29, 1979.
2. That accordingly the Washington Terminal Company be ordered to compensate Mr. Rogowsky for his net wage loss, and expunge this unjust charge from his discipline record.

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.

Under date of May 29, 1979, Car Repairman T. Rogowsky was cited to appear at a hearing on the following charge:

"Violation of WTCO. General Rule 'N', 'Participating in any unauthorized or unnecessary activity, while on duty or while on Company property is prohibited,' when on May 25, 1979 at about 4:45 A.M., you were observed by General Foreman C. A. Strickler in Car 21185 on Track 18, Station, stretched out in two seats sound asleep. You were awakened by the General Foreman by his holding a flashlight in your face and calling you by name."

Following the hearing, Mr. Rogowsky was advised that he had been found guilty as charged and would be suspended for 30 days commencing July 16, 1979. This appeal of the discipline assessed is based on the following grounds:

1. That Carrier violated Rule 29, which provides that "No employee shall be disciplined without a fair hearing..."

2. That even if Claimant was guilty as charged the discipline was unreasonable.

This second point is certainly without merit. A 30 day suspension for sleeping on duty is very lenient discipline. We turn to the first point.

The incriminating evidence against Claimant consisted of the testimony of General Foreman C. A. Strickler as follows:

"Q. What knowledge do you have of the above charge in connection with Mr. Rogowsky?

A. (Reads Statement) At 4:45 A.M., this date, I observed Car Repairmen T. Rogowsky in car 21185 for 106 in #18 track stretched out in two seats, middle of car on east side sound asleep. I awakened him by holding flashlight in his face, and by calling him by name. I asked him what he was doing asleep and he said he rode to the Car Wash with the train. I told him he knew not to ride to the Car Wash as he had other things he could have done. He didn't line up train #170 for one thing, and train 106 didn't leave for Washer until about 3:30 A.M. The head car still had a broken window also; same car had a footrest missing. I recommend to bring him up on charges for sleeping while on duty."

Mr. Rogowsky gave his version of the incident:

"Q. Mr. Rokowsky, at this time, you will be given an opportunity to explain what you were doing at the time that you are charged with being asleep in car 21185.

A. Well, first of all, I did not get my proper sleep during the day. My wife and I were planning on going down south for the weekend to Danville and I was preparing myself to get ready, but while I was trying to get some sleep, she was back and forth in the bedroom getting some clothes and what not. So, when I woke up, I was extremely tired. You see, I had been up on charge recently for missing time, so I didn't very well want to mark off again, so I decided that I had better come on in. Now, when he saw me - well, I had not lined up #170, which is true. Okay, now, when I come in at 12:00 o'clock, train #170 usually leaves out of track #12, but they had put it downstairs which I didn't know. I did not know about it because it had a good amount of cars on it. And, as for the window - well, I had the new window laying by the broken window which I was preparing to put in myself, but I figured that I would go ahead and wait for the train to run through the Car Wash before I would put it in. So, the next thing I knew is that I had found myself dozing off in the seat and all I can remember is Strick standing over top of me. I just dozed off more or less, but that was when it really happened."

Faced with this confession by Claimant, General Chairman Spero Siadys probed for a defense:

"Q. Mr. Rogowsky, is your lunch period within the fifty (5th) hour?

A. Yes, sir.

Q. Is 4:45 within the fifth (5th) hour of your tour of duty?

A. Yes, sir.

Q. So, in other words, the time that you were possibly asleep could have been the time that you were supposed to eat lunch, correct?

A. Yes, sir."

This, then, became the basis of the appeal: that Claimant was entitled to a 20 minute lunch break but did not have to eat lunch and could claim such time for sleeping. However, Claimant's testimony reflects that he had no such intention on the night in question:

"MR. SMITH: Mr. Rogowsky, Mr. Siadys made reference to the time that you were found asleep that you could have been on your lunch period. Did you, in fact, take a lunch period?

MR. ROGOWSKY: Well, not that day, I didn't. I did not really feel like eating because I was a little wore out. But, certain days I don't even get to have a lunch period, you know. And, sometimes, I really don't feel like eating at night."

We find no merit in the Organization's argument. An employee found sleeping on duty, as was Mr. Rogowsky, cannot exculpate himself by claiming he is observing his lunch period.

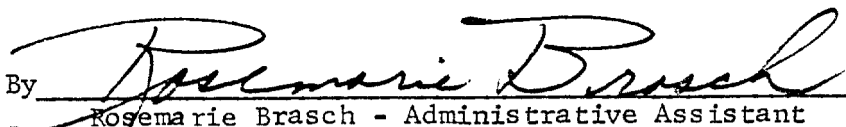
The hearing was fairly and properly conducted; the discipline was reasonable.

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 22nd day of July, 1982.