

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(System Council No. 15
(AFL-CIO
(
(Chicago and NorthWestern Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer John Foster, Chicago, Illinois, was unfairly dismissed from service of the Chicago and North Western Transportation Company, effective July 2, 1981.
2. That accordingly, the Carrier be ordered to make Mr. Foster whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his 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.

On May 27, 1981, Claimant was assigned to work on a fuel truck. It was his duty to fuel various yard switch engines. At approximately 1:50 A.M., on that date, the Carrier maintains that the Claimant was observed by two of its officers to be sitting in his truck sleeping. After an investigation on the property held on June 29, 1981, the Carrier determined the Claimant to be guilty of sleeping on duty and dismissed him from service.

The Organization contends that it was not possible for the Carrier's officers to determine if the Claimant's eyes were shut because of the darkness inside the cab of the truck. The Claimant also maintains that he was not able to hear the Carrier's officials approach the fuel truck because of the noise of moving trains.

The Board recognizes that often times proving that an employee was sleeping is a most difficult task. However, two Carrier witnesses testified that they had observed the Claimant to be asleep. Furthermore, the Claimant, by his testimony

admitted that he was sleeping on duty. In light of this admission, the claim is without merit. Therefore, the penalty to be imposed upon the Claimant is the responsibility of the Carrier unless the Board finds a clear due process violation. We do not so find. The Claim is denied.

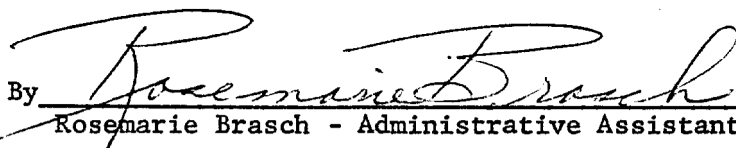
A W A R D

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 6th day of July, 1983.