

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

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

Dispute: Claim of Employee:

1. That in violation of the current Agreement, Laborer Amon Davis, Laborer, Chicago, Illinois, was unfairly dismissed from service of the Chicago NorthWestern Transportation Company effective July 2, 1981.
2. That accordingly, the Carrier be ordered to make Mr. Davis 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 for 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 employee or employees involved in this dispute are respectively carrier and employees 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 was a Laborer working as a helper on a fuel truck for the Carrier at its Proviso Diesel Shop. He had been so employed for slightly more than one year at the time of the incident.

On May 27, 1981 the Claimant and a driver were assigned to work on a fuel truck. The Carrier maintains that the Trainmaster observed the truck standing idle between 1:30 a.m.-1:45 a.m. When the Trainmaster and the Diesel Foreman went to investigate, the Carrier charges that they observed both the Driver and the Claimant in a slouched position with their eyes closed, and they only woke up after the two supervisors started banging on the windows.

As a result of this incident, following an investigation held on June 29, 1981, both employees were charged as follows:

"Your responsibility for sleeping while on duty as fuel trucker and truck driver helper respectively at the East Five (5) Yard at approximately 1:50 a.m. May 27, 1981."

The Organization challenges the testimony of the Carrier's witnesses and maintains they could not determine if the Claimant's eyes were shut since the area was not well lit. Yet both supervisors testified they stood on the running boards on each side of the truck for 2-3 minutes and observed both men "with no motion of any kind from the driver or the helper." The Claimant himself, when asked at the hearing if he was sleeping in the fuel truck, testified, "Yes, I believe I was!" Given such an admission against interest, the claim of a violation of the Agreement can not be sustained.

Further the Claimant in his slightly more than one (1) year of service, had apparently been previously disciplined on three (3) separate occasions.

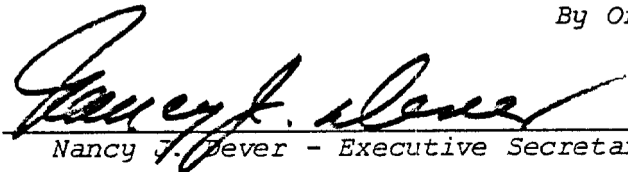
Based upon the entire record, the discipline is not deemed excessive and the Board has no basis to substitute its judgment for that of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1984