

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Chicago and Illinois Midland Railway Company

Dispute: Claim of Employees:

1. That the dismissal of Laborer Charles S. Gilchrese, Jr., Springfield, Illinois, from the service of the Chicago and Illinois Midland Railway Company on June 15, 1982, was unjust.
2. That Laborer Charles S. Gilchrese, Jr., be reinstated and compensated for all lost time, vacation, health and welfare benefits, hospital and life insurance premiums be paid with 6 percent interest added thereto.

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 employes 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 employed as a Laborer in the Carrier's Car Department at Springfield, Illinois. On May 25, 1982 during his regularly assigned shift, the Claimant was discovered by General Car Foreman Lemasters asleep while lying on a shelf. He was concealed by a canvas cover, in a cabinet which is used for storing pistons that is located in the back of the Tool Room of the Car Department. The Claimant was observed sleeping in the cabinet by three (3) witnesses over a period of approximately twenty (20) minutes.

After a hearing was held on June 7, 1982, the Claimant was removed from service for being absent from his assigned work area and sleeping while on duty.

It is undisputed that the Claimant was asleep while on duty. The Claimant indicated "maybe I did go to sleep from the medication. I don't know. Maybe so". His reference to "medication" is based upon the Organization's contention that his drowsiness was caused by medication containing codeine, which was given to him by his Dentist for pain. Indeed, the Claimant was uncertain when he took the medication. He said that "the night before, I might have took some codeine ****". He followed up this testimony by stating that "I took it that night. I hadn't took nothing that morning.****". At any rate, if, in fact, the Claimant was unable to work on May 25, 1982, or if by taking medication, he knew that it would incapacitate him, it was the Claimant's responsibility to notify his Supervisor. The Claimant acknowledged that at no time during the course of his shift did he notify his Foreman that he was ill or sleeping. The Claimant's only witness, Jack Ingram, a clerical employe with no supervisory authority said that when the Claimant "first came to work, he wasn't feeling well" because he "knew he had been taking medication for tooth or teeth problems". Suffice it to say that knowledge by Ingram that the Claimant was taking medication is not knowledge to the Carrier.

Given the remote area in the Shop where the Claimant chose to fall asleep --in a cabinet and covered with a canvas cover, the inference to be drawn is that the Claimant intended that his Foreman not detect that he slept on duty. It cannot reasonably be said that the Claimant unintentionally dozed off, in light of where and how he slept.

There is no evidence to support the bare assertion by the Claimant, that in effect, the employes could sleep or work during their assigned hours and that if they are needed by their Supervisors, they are awakened from their slumber or told to go home. Indeed, the Carrier demonstrated that it has imposed discipline, including discharge against employes, for sleeping while on duty. It is the Board's conclusion that on May 25, 1982 the Carrier satisfied its burden of proving that the Claimant was absent from his assigned work area and sleeping on duty.

In determining the severity of the discipline against the Claimant, the Carrier properly took into account the Claimant's disciplinary record. The Claimant was first employed by the Carrier in 1975. Since 1978, the Claimant's disciplinary record has included a written reprimand, a disciplinary suspension of 30 days for being absent from work assignment without permission, sleeping while on duty, and the unauthorized removal of a personal lock from, and entry to, a fellow employe's locker.

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Award No. 10209
Docket No. 10179
2-C&IM-FO-'85

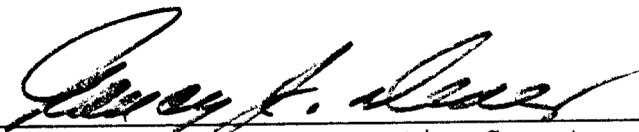
By dismissing the Claimant from service, the Carrier did not act in an arbitrary and capricious manner and did not abuse its managerial discretion. When the Claimant's infraction on May 25, 1982 is considered in light of his past disciplinary record, there is no basis on which the Board can modify or set aside his dismissal from service.

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 16th day of January 1985.