

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 and Oilers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer M. Fells, Chicago, Illinois, was unfairly dismissed from service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, effective November 9, 1982.
2. That accordingly, the Carrier be ordered to make Mr. Fells 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 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.

Subsequent to a formal hearing, the Claimant was found guilty of sleeping while on duty and was dismissed from the service.

The Carrier essentially relied upon the testimony of two of its officials to find that the Claimant was asleep. It then considered the Claimant's past record and concluded that discharge was warranted.

While the Board is not unmindful of the Organization's contentions in defense of the Claimant, two officials testified they observed the Claimant lying on his side in a sleeping posture. We have no basis to set aside the Carrier's reliance upon this testimony to arrive at its finding of a Rule violation. Given this conclusion, coupled with the Claimant's past record, which, under reasonable standards, was not good, we will not disturb the Carrier's disposition, absent a finding of arbitrary and capricious action on Carrier's part. After a review of the record, this Board finds no evidence of arbitrary or capricious Carrier action.

Form 1
Page 2

Award No. 10323
Docket No. 10107
2-CMStP&P-FO-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1985.