

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
( National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) be ordered to restore Machinist Joseph Szydlo to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
2. That Machinist J. Szydlo be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost in this period and otherwise made whole for all losses in accord with the prevailing agreement dated September 1, 1977, as subsequently amended.

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 were given due notice of hearing thereon.

J. Szydlo, Claimant, was discharged from the service of the Carrier after the Investigating Officer had found that the charges against him had been proved. Based on this offense and the past record of Claimant, the Investigating Officer considered termination justified.

Several Carrier witnesses testified that Claimant could not be found between 11:30 p.m. and 1:00 a.m. These witnesses testified that many paging calls had been made over the shop loudspeaker with no results. One witness testified:

Mr. Loumakis came up to the engineer's side of the locomotive; I came up the fireman's side. I arrived first. Mr. Loumakis was just getting into the locomotive.

I called Mr. Szydlo's name several times. I received no response.

At that point, Mr. Loumakis had made entrance into the locomotive.

I went over and I tapped the back of the engineer's side chair; received no response.

I took hold of Mr. Szydlo's shoulder and shook him, and he started to stir.

He was snoring during this time and appeared to be very groggy and not his usual self.

The testimony of Mr. Loumakis was consistent with this version of the facts.

Claimant's testimony was that he was suffering from a headache because the shop was filled with smoke. He then took an aspirin and took refuge in the cab of a locomotive. He testified that he had not been asleep during this time and was fully awake when discovered by the other witnesses. Carrier witnesses testified that at least three of the shop doors were open and that the fans were working and that smoke in the shop was minimal.

In a case as this when all the evidence is testimonial, the Investigating Officer must be the one to assess credibility. Only he had the opportunity to observe the demeanor of the witnesses, to listen to the tenor of their voices, and to assess one against the other. An appellate board which has not had the opportunity to utilize these time worn techniques is justified in overturning the credibility findings when there is evidence in the record that would tend to discredit the findings of the Investigating Officer or when there is evidence in the record that demonstrates that this Officer was prejudiced toward Claimant. There is nothing in this record that would allow the Board to overturn the credibility findings. Testimony supports the findings; the Claimant was unable to explain why, if he was awake, he did not answer any of the numerous paging calls that were announced.

Sleeping on duty has often been held sufficient grounds for dismissal in and of itself. However, the past disciplinary record of Claimant reveals that he has been disciplined on five separate occasions. This incidence obviously motivated the Carrier to rid itself of a performer whose conduct was not meeting its required standards.

Form 1  
Page 3

Award No. 10498  
Docket No. 10422  
2-NRPC-MA-'85

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 7th day of August 1985.