

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant Martin L. Holman, I. D. No. 315995, was unjustly dismissed from service of Seaboard System Railroad on March 8, 1983 after a formal investigation was held on February 8, 1983.
2. That accordingly, Service Attendant Martin L. Holman be restored to service at the Seaboard System Railroad Radnor Shops, Nashville, Tennessee and compensated for all lost time, vacation, health, and welfare benefits, hospital, life and dental insurance premiums be paid effective March 8, 1983 and payment of 10% interest rate be added thereon.

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, Martin Holman, a service attendant at the Carrier's Radnor Shops, Nashville, Tennessee, in service since August 7, 1978, was dismissed from service on March 8, 1983 as a result of an investigation conducted on February 8, 1983. The Claimant was charged with being asleep in a locker room while on duty at approximately 4:50 a.m. on the morning of February 3, 1983.

The Organization argued that the Carrier had violated Rule 32 and had unjustly treated the Claimant as a result of this disciplinary action. The Claimant claimed he was sick, and he was only laying on the bench in the locker room with his eyes closed in order to see if he would feel better. The Carrier's Supervisor would not allow the Claimant to explain the situation. The Organization further charges that the Carrier's Conducting Officer did not conduct a fair and impartial investigation, as on several occasions the

Officer would not allow witnesses to answer questions that were put to them on cross examination. The Organization also noted that the original transcript that had been signed by everyone in attendance at the investigation had been changed and the Carrier did not have the right to change this document without the consent of everyone involved. Finally, the Organization argued the penalty imposed was excessive for only a 30 second mistake on the Claimant's part.

The Carrier argued as follows: Shortly after reporting to work on the night in question, the Claimant was assigned to clean the diesel shop. At approximately 4:20 a.m. the Claimant's Foreman paged him on the radio, but he did not respond. The Claimant was paged two more times at 10 minute intervals but still did not respond. In addition the General Foreman also tried paging the Claimant without response. Approximately 30 minutes later, the Foreman found the Claimant in the locker room sleeping on a bench, and by the Foreman's testimony, the Claimant was sleeping soundly. He called the Claimant's name, and he did not awaken; and finally, he had to shake him to wake him. The Carrier states the Claimant had a fair and impartial investigation in accordance with the applicable disciplinary rule and the evidence in the transcript fully supports the conclusion that the Claimant was guilty. The seriousness of the offense justifies his dismissal. It should be noted that the Claimant did admit to being asleep at the investigation. The Carrier further argued it is accepted labor relations practice that being asleep on duty is just cause for discharge, and the Carrier also noted that the record of service by this Claimant was such that mitigation of the penalty would not be appropriate. In fact, the Claimant had been warned on many occasions and had been given two lengthy suspensions, the last being some three months prior to this incident.

Upon complete review of the evidence presented, the Board finds that the Claimant was in fact sleeping while on duty and away from his normal work area. We find no proof offered in the transcript of the investigation that would lead us to believe the Claimant had a good reason for this infraction. Certainly, if he was feeling ill, he could have contacted his Supervisor on the radio and sought his permission to be away from his work area. Sleeping on the job is normally considered a very serious offense and, coupled with the work record of the Claimant, would not allow the Board to mitigate the penalty in any way. The Board finds that the Claimant did receive a fair hearing as required in Rule 32. The Board prior to issuing its award feels it necessary to admonish the Carrier in this case regarding the changing of transcripts. Official transcripts of investigations are not to be tampered with in any way without the mutual consent of the parties involved in that investigation and, while the Board feels that this did not in any way jeopardize the due process rights of this Claimant, the Board will take a dim view of this Carrier engaging in that kind of activity in the future. However, because of the foregoing, the Board finds that the Claimant was justly dismissed from the service as required in Rule 32.

Form 1
Page 3

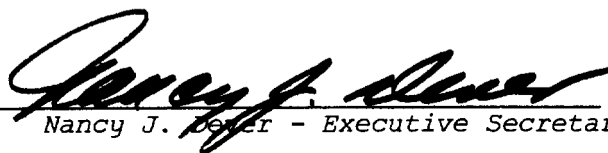
Award No. 10616
Docket No. 10655
2-SSR-FO-'85

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 23rd day of October, 1985