

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation (Amtrak))

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) unjustly dismissed Chicago, Illinois Electrician Milton Weatherall from service effective May 1, 1984.

2. That under the current Agreement, especially Rule 23(a) the National Railroad Passenger Corporation improperly held Electrician Milton Weatherall out of service pending investigation and decision effective April 6, 1984, 11:00 PM.

3. That accordingly, the National Railroad Passenger Corporation be ordered to restore Electrician Milton Weatherall to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge 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 were given due notice of hearing thereon.

Claimant, Milton Weatherall, was an Electrician in the employ of Carrier on April 6, 1984, when his conduct on that date led to an Investigation in which he was charged with:

You are hereby directed to appear for formal investigation for your alleged violation of Rule "L" of the National Railroad Passenger Corporation Rules of Conduct in that on April 6, 1984 at approximately 4:00 a.m. while on duty as a (sic) electrician at the 14th Street Coach Yard Chicago, Illinois you were observed away from your assigned work area sleeping in the handicap room of sleeper AMT 32057 which was located in the car shop on track R-6.

As a result of the evidence adduced at the Investigation, Claimant was held to be in violation of the applicable Rule and was dismissed from the service of the Carrier.

At approximately 4:00 a.m. on the morning of April 6, 1984 a Carrier General Foreman was talking to another employe outside of Sleeping Car 32057. He observed Claimant in the lower bedroom of the sleeper. After this observation he boarded the car, which had no power, and entered the bedroom in which he had observed Claimant. He shined his flashlight on Claimant and discovered that Claimant was in a reclining position, was snoring and was not awakened by the light.

The General Foreman exited the car and went to seek out another witness who could verify that Claimant was sleeping. He found another witness but before the two of them could enter the car, a track mover had been coupled to it with the normal jolting and Claimant had awakened.

The Claimant's testimony contradicted that of the Carrier witnesses. He stated that he had gone into the car looking for an employe who had borrowed a screwdriver from him earlier in the evening. He denied that he had been sleeping in the car.

It was undisputed that the Claimant was approximately two blocks away from his work assignment. There was no satisfactory explanation of why he would have believed that a fellow employe would be in a dark car away from his workplace.

The Investigating Officer credited the testimony of the Carrier witness. This is a classic instance of a one-on-one investigation wherein the testimony of one witness must be believed to the rejection of the testimony of the other. Although some argument was made that an employe should never be "convicted" on the testimony of one witness, such argument is not convincing. Any amount of mayhem could be committed without consequence if the perpetrator could assure that only one victim was present.

This Board is an Appellate Board, established to review the transcript made pursuant to the disciplinary process. Overruling the Investigating Officer to his findings of credibility should be approached with caution. The Board is denied those important tools helpful in the assessment of credibility, the ability to observe the demeanor of the witness and listen to the tenor of his voice. Therefore, our function is to carefully review the

transcript for any evidence that would demonstrate that the findings of the Investigation Officer are either arbitrary or capricious or that his conduct of the Investigation demonstrated that he was prejudiced toward the Claimant so as to deny him a fair and impartial investigation. We have searched this record and find no evidence of this nature.

The Carrier has furnished many Awards that hold that sleeping on duty is a dismissible offense. We agree with those Awards that point out the seriousness of an offense of this nature. However, we also find that any offense must be examined in context. It is undisputed that Claimant was an employee of Carrier for four and one half years. During this course of employment he has had an unblemished record. Under these circumstances we find that the penalty of dismissal was not warranted. We find that time out of service is a sufficient penalty and should serve as an adequate warning that the offense was quite serious. Therefore, we will reinstate Claimant, with seniority unimpaired but, without any pay for time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of April 1986.