

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

(International Association of Machinists and
(and Aerospace Workers

Parties to Dispute: (
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) violated Rule 24 but not limited thereto of the controlling agreement when they dismissed Machinist M. Foy account of alleged violation of Carrier Rule of Conduct "L." Claim is made to restore Claimant to service and compensate him for all lost pay up to the time of restoration to service at the prevailing Machinist's rate of pay.

2. That Machinist M. Foy 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, 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 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 is a Machinist employed by the Carrier's Diesel Shop at 1600 South Lumber Street, Chicago, Illinois.

On date of April 19, 1984 the Carrier sent the following notice to the Claimant:

"You are hereby directed to appear for a formal investigation as indicated below:

'Your responsibility for your alleged failure to comply with that portion of the National Railroad Passenger Corporation Rule of Conduct "L".

In that during your tour of duty on April 13, 1984, you were observed sleeping in the Wheel Truing Building.'

You may produce any witnesses you so desire and you may be accompanied by a representative as provided in your current and governing agreement without expense to the National Railroad Passenger Corporation."

After several postponements the Investigation was held on June 12, 1984. And on date of June 25, 1984 Claimant was advised that he was dismissed.

Claimant was charged with being asleep while on duty at approximately 4:30 A.M. on April 13, 1984.

At approximately 4:30 A.M. on June 13, 1984, General Foreman William H. Rossetti went to the Wheel Truing Shop to check on a locomotive having its wheels trued. His testimony follows:

"Q Mr. Rossetti, did you enter the Wheel Truing Building on April 13, 1984?

A Yes, I did. At approximately 4:30 A.M. I went to the Wheel True Building to check on the progress of Locomotive No. 318, which had been shopped to true all wheels. Upon entering the Wheel Truing Building, I found Locomotive 318 in the process of having its last wheel trued. I found Mr. Rusniak, Machinist, monitoring the wheel true machine; and I found Mr. Foy, Machinist, lying on a bench.

I approached Mr. Foy. He was laying faced away from me on his side. I leaned over to look at his face and found his eyes were closed. He presented all of the appearances of sleep. I called his name and was given no response. I called his name louder and again was given no response. I repeated his name exactly seven

times. Each time my voice became audibly louder, in the background of the wheel truing machine, which was running and was quite loud. At last I grabbed his shoulder and shook him. He then turned, looked at me, appeared startled, and sat up straight.

I asked Mr. Foy if he was ill. His reply was, 'No.' I repeated my question the second time, asking if he was sure he was not ill. He again replied, 'No.'

I then instructed him to punch his timecard and give it to me, which he did.

I told him to go home. He asked me if he was out of service. I said, 'I did not say you are out of service, I told you to go home.' He asked me again. I repeated it again."

The Claimant denies that he was asleep but does not deny that he was laying on the bench. He alleges that they had mice in the Shop and that he was laying on the bench watching for them.

This basically is the case; the Foreman alleging Claimant was asleep and the Claimant denying it. There were no other witnesses.

It is well established that this Board does not resolve such issues as the credibility of testimony among witnesses and we shall not do so in this case. We do however believe that Claimant's statement that he was laying down watching for mice seems a bit thin. If he was watching for mice why lay down? And even if that is why he was laying down it certainly was not performing service for the Carrier.

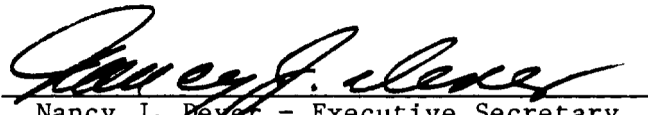
From transcript testimony it would appear that this "laying down" period was rather brief and we feel that in this instance the penalty of permanent dismissal is a bit harsh. We will therefore Award that the Claimant must be returned to service with all seniority and whatever rights such seniority entitles him, but with no backpay, and with the admonition to the Claimant, that should there be any future transgressions, he should not expect any further consideration from this Board.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 1st day of October 1986.