

The Second Division consisted of the regular members and in addition Referee W. J. Peck 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 suspended Rensselaer, N. Y. Electrician Terrance Fox fifteen (15) calendar days without pay effective August 12 through 26, 1984.

2. That accordingly the National Railroad Passenger Corporation be ordered to restore Electrician Terrance Fox 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 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 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 waived right of appearance at hearing thereon.

The Claimant in this case is an Electrician employed at Carrier's repair facility in Rensselaer, New York. His work apparently consists mainly in checking out the electrical facilities on the inside of passenger cars and making repairs when necessary.

The Claimant has been charged with being asleep while on duty.

At approximately 5:27 AM on July 3, 1984 the General Foreman for the third shift came through the cars, and allegedly found the Claimant sitting down and with his eyes closed, apparently asleep. The Foreman allegedly called his name three times before the Claimant opened his eyes and stretched. The Foreman allegedly said good morning to him and asked if he had a good sleep. The Claimant denied he had been asleep and claims he had merely closed his eyes during the time the cars were being moved forward. He gave as reason for closing his eyes an irritation caused by diesel fumes in the shop caused by locomotives left running. This Foreman was the only witness against the Claimant.

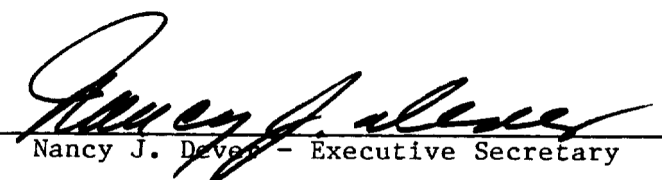
There were not a great deal of facts presented at the Investigation. We are, accordingly, left with the Foreman's claim that Claimant was asleep and the Claimant's denial. It is well established that this Board does not resolve such issues as credibility between witnesses. However, if the Claimant was asleep it could certainly not have been very long as the Foreman claims (and this has not been denied) that he allegedly awakened Claimant at 5:27 AM; according to the Claimant he sat down at 5:20 AM. It seems doubtful if he could have went instantly to sleep, so the time could almost surely have been a very few minutes. We feel that in this particular situation a fifteen day suspension seems rather severe and will accordingly reduce it to five calendar days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devo - Executive Secretary

Dated at Chicago, Illinois this 15th day of October 1986.