

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
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(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer R. Carpenter, Chicago, Illinois, was unfairly dismissed from service of the Illinois Central Gulf Railroad effective February 10, 1987.

2. That accordingly, the Illinois Central Gulf Railroad be ordered to make Mr. Carpenter whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from 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.

On January 5, 1987 Claimant was notified to attend an Investigation on a charge that he was in violation of Rule No. 5 when on December 21, 1986 he allegedly was found sleeping while on duty at 6:30 PM by his Foreman. After two postponements, requested by the Claimant, the Hearing got underway on January 26, 1987. At the outset of the Hearing Claimant indicated that he did not desire to be represented by either of the two Union Officers in attendance. Instead he opted to represent himself. The Union Representatives, nonetheless, remained throughout the entire proceeding. On February 10, 1987 Claimant was notified that he was terminated. The measure of discipline assessed, according to the termination letter, was based in part on the individual's past record.

A threshold issue before this Board is whether or not Claimant was afforded a fair Investigation as required by the parties' Agreement. It is argued that if Claimant had better Union representation at his Hearing perhaps a more favorable result would have obtained. Two elected Officers of Claimant's Union were present at the Hearing and were, according to testimony in the record, willing to represent him in the matter. There is no showing that these individuals were incompetent or otherwise incapable of undertaking the task adequately. It was Claimant's decision, for unannounced reasons whatever they may be, not to utilize their services. It cannot now be convincingly argued that Claimant was not adequately represented because he was the one responsible for not using the services of the Representatives available in the first place.

While on the subject of representation we must note that in review of the transcript of the Hearing that Claimant crossexamined Carrier witnesses and developed his defense with witnesses of his own. His conduct did not demonstrate that he was a stranger to the proceedings and obviously he was not otherwise impeded in his defense.

Our reading of the record discloses that adequate evidence was developed to establish Claimant's guilt on the charge of sleeping in a locomotive cab while on duty. The testimony of Carrier witnesses on this point is clear, consistent and unimpeached.

In this regard it should be noted that at one point Claimant indicated that he had not gotten much sleep the night before and at another he indicated that he was on his lunch break at the time. Also, in mitigation, it was contended that Claimant had worked nine days without a day off and that he was coming down with the flu which would make him drowsy.

A main element of Claimant's defense, at his Hearing, was that he was being harassed by his Foreman. In the circumstances of this case we find this to be just allegation without any proof in support whatsoever.

In arriving at the decision to terminate Claimant, rather than impose a suspension, Carrier indicates that it relied on the employee's past record. We have examined this record and find it wanting. In an eight year span there are seven entries of warnings and suspensions (including one of 30 days and one of 60 days) for attendance, damage to Carrier property, being AWOL and insubordination. Accordingly, on this record dismissal for a proven instance of sleeping on duty is not excessive.

The discipline will not be disturbed.

Form 1
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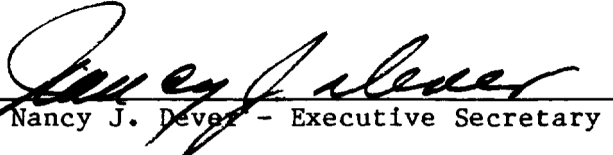
Award No. 11531
Docket No. 11485
88-2-87-2-120

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 3rd day of August 1988.