

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company is violative of Rule 32 of the June 1, 1960 controlling agreement and has unjustly dealt with and damaged Crane Operator E. G. Matthews at North Little Rock, Arkansas when they removed him from service on August 19, 1985 and subsequently denied him a fair and impartial hearing resulting in the unjust discipline of 45-days actual suspension commencing August 20, 1985 by Notice Number 1985-22 dated September 12, 1985.

2. That, accordingly, the Missouri Pacific Railroad Company be ordered to make Crane Operator E. G. Matthews whole for all seniority rights, vacation rights, holidays, health and welfare benefits and all other benefits that are a condition of employment that may have been impaired as a result of the assessed discipline, and Mr. Matthews be compensated:

a) the remaining hours of his shift at the straight time rate for when he was taken out of service at 4:50 p.m. on August 19, 1985; and,

b) eight (8) hours at the straight time rate, five (5) days a week beginning August 20, 1985 and continuous until 11:59 p.m., October 3, 1985, inclusive; and

c) eight (8) hours at the straight time rate for October 4, 1985 for being held out of service in excess of the discipline assessed - the 45-days actual suspension; and,

d) in addition to the money claimed herein, the Carrier shall pay Mr. Matthews an additional amount of 6% per annum compounded on the anniversary date of the claim.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On August 19, 1985, the Claimant was seated in the cab of the 250-ton overhead electric crane at the Carrier's Jenks Shop, approximately 54 feet above the diesel floor on rail number one. While he was awaiting instructions for the use of the crane, he turned his body on one side in the cab, in a reclined position, with his arm resting on the back of the chair. The Truck Shop Foreman observed him in this position and noted that his eyes were closed. The General Foreman, who was also present, waved his arms at the Claimant to arouse him, but the Claimant did not respond. The two Foremen --along with the Assistant Shop Superintendent and several visitors to the facility--yelled, waved, and whistled to the Claimant in an attempt to get his attention, but all to no avail. As a result, the Claimant was removed from service pending Investigation.

The Claimant was subsequently charged with sleeping at approximately 4:30 p.m. to 4:40 p.m., August 19, 1985, in violation of Rule 602, Conditions of Employment Item 5, which reads:

"602. Employees must not sleep while on duty. Employees who are in a reclined position with eyes closed will be considered in violation of this Rule."

"Conditions of Employment 5. To familiarize myself with and to observe all rules and regulations governing the service to which I shall at any time be assigned; to maintain strict integrity of character; to faithfully observe the rules and/or policy governing the use or possession of intoxicating liquors or narcotics; and to perform my duties to the best of my ability."

The Claimant was assessed a 45-day actual suspension. He had previously been found in his work area on June 19, 1985, with his arms on the control stand and his head resting on his arms. He had been warned at that time to be more attentive while in his work area, and he had promised that he would be.

It is the opinion of the Board that the evidence presented supports the Carrier's conclusion that the Claimant was asleep while on duty. We see no indication of bias, unreasonableness, or predetermination in the Carrier's handling of the case. Further, since it is beyond the scope of the Board to resolve pure credibility issues, we have no basis upon which to discredit the testimony presented to us. And, in light of the previous related misconduct of the Claimant, we cannot deem the discipline excessive, particularly since other Awards of the Board have found sleeping on duty sufficiently serious to warrant dismissal (see Second Division Awards 10498, 8537; Third Division Awards 21054, 22027).

Form 1
Page 3


Award No. 11707
Docket No. 11346
89-2-87-2-13

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 12th day of April 1989.