

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

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

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rule 37, when they unjustly dismissed Electrician A. C. Thomlison from service beginning May 1, 1989 following investigation held on April 13 and 14, 1989, North Platte, Nebraska;

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electrician Thomlison as follows:

- a. Compensated for all lost time at the prime rate of interest.
- b. Returned to service with seniority rights unimpaired.
- c. Made whole for all vacation rights.
- d. Made whole for all health, welfare and insurance benefits.
- e. Made whole for pension benefits including railroad retirement and unemployment insurance.
- f. Made whole for any and all other benefits that he would have earned during the time he was removed from service, and
- g. Any record of this unjust discipline action be expunged from his personal 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 was employed by the Carrier as an Electrician at North Platte, Nebraska. During his tour of duty on March 6, 1989, he was observed by two Supervisors with his head tilted down and both eyes closed while in the passenger seat of a company truck. On March 6, 1989, the Claimant was notified in writing to attend an Investigation in connection with the above incident. Included in the charge was reference to violation of Rule 602. Rule 602 reads, as follows:

"SLEEPING: 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."

Under date of March 9, 1989, apparently after a discussion with a Carrier Supervisor, the Claimant addressed the following letter to the Carrier:

"I wish to waive my rights to the formal investigation, which is scheduled for March 10, 1989 at 2:00 p.m. in the conference room, 2nd floor, North Platte Locomotive System Shop.

I will accept punishment due me, which I understand will be five working days off without compensation, to be taken under your direction."

When the Organization became aware of the March 9, 1989 letter it objected because the Investigation Rule contained no waiver clause. Consequently, the terms of the March 9 letter did not become effective. Subsequently, after several postponements an Investigation was held on April 14, 1989. Following the completion of the Investigation, the Claimant on May 1, 1989, was notified that the charges were sustained and that he was assessed six days actual dismissal (suspension) beginning May 1, 1989.

The Organization contends the Claimant was not apprised of the Rules that he violated. We find no basis for this contention. The notice of Investigation dated March 6, 1989, very clearly indicates the Rules (including Rule 602) the Claimant allegedly violated.

The Organization argues that the Claimant's guilt was predetermined. We can find no basis for this argument. Our review of the Investigation testimony indicates that the Investigation was conducted in a fair and impartial manner. The Claimant and his representative were given every opportunity to fully question all witnesses, including a Carrier Supervisor called as a witness for the Claimant. The Organization also argues that the Claimant was not afforded a true and unbiased Hearing because the Hearing Officer acted in a dual capacity, i.e., conducted the Investigation and assessed the discipline.

The Board has ruled on this argument in numerous Awards. The Board has ruled that the fact an individual conducts the Investigation and also assesses the discipline does not in and of itself constitute reversible error when it appears from the transcript of the Investigation that the Claimant was afforded a fair hearing. As indicated above we have concluded the Claimant was afforded a fair Hearing. See Second Division Award 6057.

At the Investigation, two Carrier witnesses testified that they observed the Claimant sitting in the vehicle with his head tilted down and both eyes closed for between 60 and 90 seconds. At the Investigation the Claimant admitted that he was in fact sitting with his head nodded forward and his eyes closed. Claimant blamed stress for being in the aforementioned condition and that he was trying to relieve the stress by closing his eyes per instructions which were issued in the Bailey Inquirer. The Bailey Inquirer has a section pertaining to stress and relaxation. It recommends for relaxation to close your eyes and concentrate on a pleasant scene for a few moments.

It is our conclusion from reading the testimony in this case that the Claimant was guilty of sleeping on duty (rather than meditating for a few moments) thus was in violation of Rule 602, the first sentence of which prohibits sleeping on duty. It is noted the Claimant, in his closing statement, makes reference to having a full belly from just having lunch and the fact it was the first sunny day. Such factors, of themselves, can be conducive to causing an individual to fall asleep.

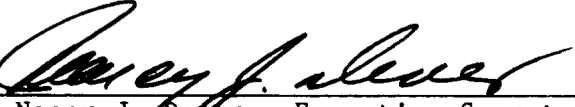
It is not clear to this Board why the Carrier prior to the Investigation was willing to accept a five-day suspension as discipline but after the Investigation assessed the Claimant a six-day suspension. Perhaps it was in retaliation for having to hold an Investigation. Whatever the Carrier's reason we believe the circumstances surrounding this case warrant a reduction in the discipline to a five-day suspension.

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 16th day of January 1991.