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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12547
Docket No. 12383
93-2-91-2-179

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(Norfolk Southern Railway Co.

STATEMENT OF CLAIM:

"1. That, the Norfolk Southern Railway Company violated the controlling Agreement when they unjustly dismissed Electrician J. R. Tory from service at their Chattanooga Diesel Shop in Chattanooga, Tennessee effective July 25, 1990.

2. That accordingly the Norfolk Southern Railway Company be ordered to reinstate Electrician J. R. Tory to service with all rights and benefits unimpaired and compensated for all monetary losses sustained account of the unjust dismissal in violation of the Agreement."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was dismissed for allegedly sleeping on duty on July 18, 1990, in violation of Carrier's General Rule 26. Claimant had begun service in July 1970. On the date in question he was working the third shift. Beginning at approximately 3:50 a.m., the General Foreman and Senior General Foreman observed Claimant asleep in the cab of a locomotive. Claimant was awakened about 4:00 a.m. At the same time, the Foremen also observed a Laborer asleep next to Claimant.

Claimant testified that he had been working the third shift for about two and one-half months, and had not fully adapted his sleep habits to sleeping in the daytime, and therefore, was not well-rested when he reported for duty on the day in question. He further testified that he had completed his tasks and was sitting in the cab to wait for a Machinist to move the locomotive so that he could continue his other assigned duties when he fell asleep. He was in a location where he could easily be seen by supervision. The Laborer who was also found asleep in the cab received a thirty-day suspension.

The Organization contends that dismissal was an excessive penalty under the circumstances. The Organization observes that Claimant did not intend to fall asleep, was not trying to hide from supervision, and was not avoiding work, but instead was waiting for a Machinist to move the locomotive so he could continue his work. The Organization questions why Claimant was dismissed while the Laborer received a lesser penalty.

Carrier argues that Claimant's dismissal was appropriate. Carrier contends that sleeping on duty is a dismissable offense in the industry and on the property. Carrier further cites Claimant's prior record, which includes ten prior disciplinary actions, including a prior ten-day suspension for sleeping, in support of the penalty in this case.

There is no dispute that Claimant was asleep and did violate General Rule 26. The only question before this Board is the penalty. It is well-settled that we may not substitute our judgment for Carrier's, and may only set aside a penalty where it is arbitrary, capricious or excessive.

Sleeping on duty is a very serious offense which often supports dismissal. As evidenced by Carrier's treatment of the Laborer, sleeping on duty does not invariably lead to dismissal. Carrier relies on Claimant's prior record to support Claimant's dismissal. It is true that Claimant had been disciplined ten times prior to the event in question. Nine of those ten disciplinary actions, however, occurred between August 24, 1972, and June 20, 1979. In other words, nine of the ten prior disciplinary actions were between eleven and eighteen years old. Claimant's one prior suspension for sleeping on duty was eighteen years old. Claimant's only discipline since June 20, 1979, was a July 20, 1987, three-day suspension for absenteeism.

Under these circumstances, we conclude that, although Claimant's misconduct was very serious, dismissal was an excessive penalty. We find that a lengthy suspension was warranted. Accordingly, we will reduce Claimant's dismissal to a suspension for the

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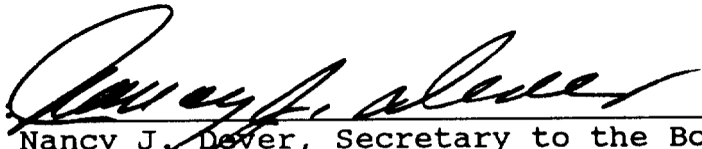
period held out of service. Claimant shall be restored to service, but without backpay or other make-whole relief.

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, Secretary to the Board

Dated at Chicago, Illinois, this 21st day of July 1993.