

Award No. 1346
Docket No. 1287
2-D&RGW-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)

THE DENVER & RIO GRANDE WESTERN
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement Machinist C. T. Carter was unjustly suspended at 5:45 A. M. on July 8 and unjustly dismissed from the service on July 19, 1947.

2—That accordingly the carrier be ordered to reinstate this employe to all service rights with pay for all time lost since 5:45 A. M. on July 8, 1947.

EMPLOYEES' STATEMENT OF FACTS: Machinist C. T. Carter, hereinafter referred to as the claimant, entered the service of the carrier on July 24, 1930, in the capacity of a machinist helper at Grand Junction, Colorado, and he served a machinist helper apprenticeship between the period of December 12, 1936, to January 29, 1940. This claimant also served the carrier in the capacity of foreman at Bond, Colorado.

On April 2, 1947, the claimant was furloughed on account of a drastic force reduction at Grand Junction, Colorado. However, commencing with July 2, 1947, he was assigned to the third shift from 11:00 P. M. to 7:00 A. M. in the engine house to fill the vacancy of a vacationing machinist.

At approximately 5:45 A. M. on July 8, 1947, the round house foreman suspended the claimant from service, allegedly for having been found asleep in the cab of Engine 1132 and a copy of the letter of charges dated July 15, 1947, which summoned the claimant to stand investigation at 1:00 P. M. on July 16, 1947, is submitted, identified as Exhibit A.

The investigation was held as scheduled at 1:00 P. M. on July 16, 1947, and a copy of the transcript record thereof is submitted, identified as Exhibit B. However, subsequent to this investigation or on July 19, 1947, the carrier's General Foreman Brown advised the claimant that he was dismissed from the service, copy of which is submitted, identified as Exhibit C.

Carrier has always dismissed employes that were found asleep while on duty and under pay. In the third paragraph of organization's letter of September 4, 1948, organization refers to several cases where employes have been dismissed for being asleep while on duty and under pay. In each of these cases the employe admitted that he had been asleep and that he realized that such conduct on his part could not be tolerated by carrier and he was then reinstated on a leniency basis **without pay** for time out of service.

Mr. Carter made no excuse for being found asleep except to deny that he was asleep. This self-serving declaration, on the part of Mr. Carter, cannot be given much weight in view of the testimony of three (3) disinterested persons that they saw Mr. Carter asleep.

In addition, in paragraph 3, organization refers to Wilbur Wages being assessed 60 demerits for being found asleep. Wilbur Wages was found asleep in the inspectors' shanty at Grand Junction. An investigation was scheduled to determine facts in this case. Wilbur Wages failed to appear at the investigation. As a result of this investigation Mr. Wages was dismissed from carrier's service. Later Mr. Wages appeared at the office of the master mechanic and stated that he did not appear at the investigation because he was detained at a doctor's office. The investigation was reopened and Mr. Wages admitted he had been asleep and explained that his stomach had been bothering him and he had stretched out on the floor to relieve the pain and had fallen asleep. The local committeeman asked for leniency and in view of the facts in the case leniency was granted Mr. Wages. This would in no way alter the fact that Mr. Carter was found asleep and offered no excuse for his being asleep, other than to make a self-serving denial that he was asleep, which denial was refuted by the testimony of three (3) disinterested persons that he was asleep.

The investigation in this case shows conclusively that C. T. Carter was asleep during his prescribed hours of service and at a time when he was under the pay of carrier. Carrier was compensating C. T. Carter for the performance of services, and not for sleeping. Carrier cannot approve of an employe sleeping during his assigned hours of service and your Board should not approve such conduct.

Carrier submits this claim should be denied.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record in this case does not justify a continuance of the discipline assessed. The claimant should be restored to service with all seniority rights without pay for time lost.

AWARD

Claim disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1949.