

Award No. 2175
Docket No. 1969
2-RDG-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109 RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**
READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly suspended Journal Box Packer John J. Loughrey from service at about 10:00 A. M. on February 6, 1955, pending the holding of a hearing on February 8, 1955, at 10:00 A. M.
2. That accordingly the Carrier be ordered to compensate him for time lost due to the improper suspension.

EMPLOYEES' STATEMENT OF FACTS: Journal Box Packer John J. Loughrey, hereinafter referred to as the claimant, entered the service of the Reading Company, hereinafter referred to as the carrier, on June 27, 1950 as a *coach cleaner*. On July 4, 1952, he was *advanced to journal box packer* at Port Richmond, at which position he was working on Sunday, February 6, 1955. Claimant's assigned hours were from 7:00 A. M. to 3:00 P. M., with a work week of Sunday through Thursday, rest days Friday and Saturday.

The claimant was found in a reclining position on a work bench and the carrier charged him with "neglect of duty" suspending him from service at about 10:00 A. M. Sunday, February 6, 1955, pending the holding of a hearing. The hearing was held on February 8, 1955, at 10:00 A. M., E. S. T., Room 301-A, Reading Terminal, Philadelphia, Pennsylvania.

A copy of the transcript of the hearing is submitted herewith and identified as Exhibit A.

The carrier elected to discipline the claimant and a copy of the notice of discipline is submitted herewith and identified as Exhibit B.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

was proper in view of the nature of the offense and the circumstances surrounding.

For the information of the Board, carrier submits herewith, identified as carrier's Exhibit C-1, a copy of the testimony taken at the hearing afforded claimant Loughrey on February 8, 1955. This testimony brings out the fact that claimant Loughrey was clearly neglecting his duty as charged and further that the carrier had been experiencing considerable difficulty with employes located at Frankford Avenue, Port Richmond, and in fact the disciplinary problem was such that both Foreman Kline and carmen's local chairman had been obliged to talk to employes located at that point and point out their responsibilities and what was expected of them.

The Board will note that at the hearing and investigation the local chairman of the Carmen's Brotherhood stated that this was not a proper case to take a man out of service pending a hearing and investigation, and that the intent of Rule 34 (b) is that a proper case would involve an employe stealing on the property, fighting or being intoxicated and, in that way, endangering company property or fellow employes. Carrier does not concur or agree with this position and submits that it would have been a simple matter to word the rule in this fashion if this had been the intent of the parties when the rule was negotiated. Carrier submits that obviously what constitutes a proper case depends on all the facts in connection with the particular incident involved. In the instant claim, there is a clearly shown and undisputed neglect of duty at a location where carrier had been having serious disciplinary problems.

Carrier submits, and the Board has so held, that the assessment of discipline is a matter within the discretion of the carrier. Likewise, carrier submits that the suspension of an employe pending a hearing is a matter within the discretion of the carrier and carrier maintains that in the instant case there has been no abuse of that discretion. Such action, in view of the nature of the offense and the existing situation at Frankford Avenue, Port Richmond, was warranted and justified. The suspension pending hearing and investigation was not assessed arbitrarily, capriciously or without just cause, and your Board has previously held that where the carrier has not acted arbitrarily, unreasonably or without just cause, the judgment of the Board would not be substituted for that of the carrier.

In part two of its statement of claim, the Brotherhood requests that carrier be ordered to compensate Loughrey for time lost due to improper suspension. With respect to this portion of the Brotherhood's claim, carrier submits that in addition to the fact that suspension of claimant was within the discretion of the carrier and was justified, there has not been any objection to the discipline of ten days actual suspension assessed Loughrey. The claimant was suspended for two days prior to the hearing and for the remainder of his actual suspension, or eight days, following the hearing. Therefore, carrier submits that clearly the monetary claim as submitted is without merit.

Under the factual evidence presented hereinbefore, it is carrier's position that it was proper to suspend claimant Loughrey pending a hearing. The suspension was fully justified by the nature of the offense and the circumstances surrounding the offense and was not in any sense arbitrary or capricious. Furthermore, the request for reimbursement of sixteen hours pay to claimant is not justified by the rules of agreement or the factual situation before the Board and carrier, therefore, requests that the claim as submitted to the Board be denied in its entirety.

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.

Claimant was assigned as journal box packer at Port Richmond, Philadelphia, Pennsylvania. Claimant was assigned 7:00 A. M., to 3:00 P. M., Sunday through Thursday, rest days Friday and Saturday. On Sunday, February 6, 1955, at 9:45 A. M., claimant was found in a reclining position with his head resting on a jacket propped against the vise on a work bench. He was charged with neglect of duty and was taken out of service pending a hearing. A hearing was held on February 8, 1955, and claimant was given a suspension of ten (10) working days. The suspension of ten (10) days was not appealed from. The complaint is that carrier violated the agreement in taking claimant out of service pending a hearing. The claim is for time lost pending the hearing.

We agree with the organization that this is not a proper case for suspension pending a hearing. A proper case is one which could or would endanger company property, company employes, or the public, if the offending employe is not removed from service immediately. Awards 724, 1261. The carrier contends that sleeping on duty as claimant was evidently doing, is a serious offense in the railroad industry and that immediate suspension was justified. We agree that sleeping on duty may be a serious offense depending upon the craft and the duties and responsibilities of the position. We cannot say, however, that circumstances have been shown in the instant case to warrant an immediate suspension.

The record shows that claimant contended that he was tired and did not feel well. He cannot, of course, claim time for a day (February 6, 1955) when he was unable to work. February 7 and 8, 1955, were included in the ten (10) working days he was suspended from service. To allow pay for these days would in effect require the carrier to pay for two (2) of the days of his suspension. Since he was properly suspended, no appeal having been taken from the discipline imposed, he can have no claim for any of the ten (10) days included in the time of his suspension. The carrier in effect corrected its error in suspending claimant before investigation by allowing such time as a part of the discipline imposed.

AWARD

Claim 1 sustained. Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July, 1956.