

Award No. 3613
Docket No. 3431
2-P&LE-TWUOA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA,
A.F. of L.-C.I.O. (Railroad Division)**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: On April 21, 1958 a hearing was held concerning F. R. Repasky as to what was supposed to have happened on March 27, 1958.

After the investigation F. R. Repasky was notified that he was to serve thirty (30) actual working days.

The Organization is not satisfied with the sentence imposed as the Organization feels this sentence for a first offense was too severe.

For this reason the Organization requests that the suspension be removed from F. R. Repasky's record and that he be compensated for every day that he was held out of service.

EMPLOYEES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-96.

That F. R. Repasky is an employe of the carrier.

That F. R. Repasky was sick and not sleeping as charged by the carrier and that this is borne out by signed statements of two (2) employes of the carrier.

That General Foreman F. A. McCrudden (1) was the man who preferred the charge against F. R. Repasky; (2) then acted as witness against F. R. Repasky which is contained in the investigation; and (3) then passed sentence on F. R. Repasky.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering carmen, their helpers and

"It is contended that the evidence adduced at the hearing is not sufficient to show claimant guilty of the precise charge made against him. Rule 22(a) provides that an employe will be 'advised of the precise charge against him.' The evidence adduced shows claimant was asleep while on duty, at Sweetwater, Texas, on September 26, 1951, from shortly after 5:00 A.M. until 6:30 A.M., when he was awakened. The charge made was fully established by the evidence carrier adduced at the hearing.

"It is also contended that the hearing was not fair an the kind contemplated by the parties' agreement because Master Mechanic J. H. Webb acted as jury and judge. It is true that Webb filed the charges, conducted the hearing, asked questions, determined the issues and assessed the penalty. But such acts on his part do not destroy the validity of the hearing. * * *"

In Second Division Award No. 1979, with Referee Stone, it was stated in **part** in the findings:

"Claimant was dismissed from service after hearing on charges of insubordination and loafing and sleeping on the job, and here claims unjust dismissal and seeks restoration to service with compensation for time lost.

"Such hearing is not analogous to a criminal proceeding, requiring 'irrefragible evidence' of guilt, as urged by employes. We properly determine only whether there appears to be decision without prejudice and penalty without caprice. A careful review of the evidence in the record before us convinces that carrier representative decided fairly upon substantial evidence. * * *"

CONCLUSION

The carrier has conclusively shown that Claimant Frank Repasky was guilty of sleeping while on duty at Lansingville, and merited the thirty-day suspension with which he was assessed. The carrier has also shown that the disciplinary measure taken in this case was not arbitrary, capricious or in bad faith, but was most lenient in view of the seriousness of the offense here involved.

Award No. 2066, Second Division, National Railroad Adjustment Board, has been cited in support of carrier's position.

The carrier respectfully submits that the organizations' request for removal of the suspension from Mr. Repasky's record and for compensation for each day held out of service is entirely without foundation and earnestly requests that same 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was disciplined by thirty day suspension account of sleeping on duty. Removal of suspension and pay for time lost is sought on the grounds that the penalty was too severe and that the investigation was not fair and impartial by reason of the fact that claimant's general foreman, whose name was signed to the notice of investigation, was a witness also at the hearing and assessed the penalty.

There is no substantial dispute as to the facts. Claimant freight car repairman during his tour of duty had been transported by truck to a car shop to repair cars and load material. He did not deny being found asleep in the shop office but stated that he was too ill to work and was waiting for another employe to take him home in the truck when through with loading but had not reported his illness to his foreman. However he did not go home in the truck but came back with it and completed the day, though as he says without working.

The fact that claimant's general foreman personally saw claimant sleeping and knew the surrounding circumstances made him no less able to evaluate the situation fairly. Award No. 1795 of this Division. Considering the whole situation we cannot find that the penalty was so excessive as to be arbitrary.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December, 1960.