

Award No. 5796

Docket No. 5680

2-SCL-EW- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Electrical Workers)**

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

The Seaboard Air Line Railroad Company unjustly, improperly and without supporting the burden of proof dismissed Electrician J. A. McDaniel, Jr., from service beginning October 5, 1966.

That accordingly, the Carrier be ordered to remove this unjust and improper dismissal from the service record of the aforementioned employee and compensate him for all time lost in connection therewith, beginning October 5, 1966 through and including such date as he is properly restored to the service of the Carrier.

Also, that Mr. McDaniel be reinstated with all seniority rights, vacation rights and privileges, insurance rights and protection as well as all other compensation lost as a result of this improper and unjust dismissal.

EMPLOYEES' STATEMENT OF FACTS: Electrician J. A. McDaniel, Jr., hereinafter referred to as the claimant, was employed by the Seaboard Coast Line Railroad Company, (Formerly Seaboard Air Line Railroad) hereinafter referred to as the carrier, in its electrical department as an electrician apprentice on October 17, 1960.

During claimant's tenure of employment he rendered loyal and faithful service to the carrier in his normal duties as an electrician apprentice and subsequently as an electrician. Additionally, the claimant was complimented on numerous occasions for rendering service to the carrier above and beyond his normal required duties by exercising unusual talent as an artist, which talent he utilized on many occasions in preparing "Cartoon" drawings to promote safety on the property of the carrier. A careful review of the claimant's personal record will so indicate the above facts and is contained in letter from Shop Superintendent E. P. Bledsoe dated July 27, 1962 to the claimant, reading as follows:

Carrier reiterates, therefore, that this claimant was properly charged, the hearing was fair and impartial, the evidence sustained the charge and the penalty imposed was neither unreasonable nor an abuse of discretion.

Your board has held as follows, in Second Division Award 4629, with Referee Whiting:

"Claimant was charged with being asleep while on duty. There was substantial credible evidence supporting the Carrier's decision that he was guilty of the charge.

Sleeping while on duty is generally regarded as an offense which justifies discharge. . ."

Also, in Second Division Award 4123, with Referee Johnson, it was ruled:

"It is also contended that claimant was improperly suspended pending the hearing, under Rule 33 1/2 which authorizes 'suspension in proper cases.' No awards are cited which hold that charges of sleeping on duty are not proper cases for suspension; in Award 1541, under an identical suspension rule, this Division held that sleeping was a complete neglect of duty, and upheld both the suspension and the discharge. Claimant's suspension pending the hearing cannot be held improper."

It was further held, in Second Division Award 2066, with Referee Goudlass, as follows:

"The subject of discipline should never be treated lightly.** We recognize the need for discipline to maintain order, safeguard lives and property, and to assure a pattern of general efficiency.

Once it has been established that an employee has been guilty of an offense, which requires disciplinary action, all of the facts and circumstances should be very carefully considered before arriving at a decision as to the amount of discipline warranted. In such deliberation it is our opinion that the following should be carefully considered: (1) the seriousness of the infraction.** (2) The past record of the violator.** (3) The attitude of the employee in respect to the likelihood of a violation in the future. (4) The effect of the amount of discipline, upon other employees, in pointing out the necessity of compliance with the rules."

Carrier subsequently offered to reinstate this claimant effective January 3, 1967, feeling he had benefited from the discipline. However, he declined this offer, although his representative considered it "most generous."

Carrier submits, therefore, that a sustaining award in this dispute is not warranted, and that the claim should 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 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 waived right of appearance at hearing thereon.

Claimant was charged with and found guilty of being asleep while on duty, negligence in the performance of his assigned duties, and unsatisfactory service.

The record in this case, including the transcript of the formal investigation, shows there was substantial credible evidence to support the finding that claimant was asleep on the job which is generally held to be an offense justifying discharge because it is tantamount to negligence in the performance of duty. There is, however, insufficient evidence to support the charge of unsatisfactory service.

In view of the foregoing, the Board is of the opinion and so finds that Claimant should be reinstated to service with the Carrier, with seniority and other contractual rights unimpaired but without pay for time lost.

A W A R D

Claim disposed of in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1969.