

Award No. 6327

Docket No. 6090

2-SOU-CM-'72

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Agreement, Carman W. Webber, Jr., Birmingham, Alabama, was improperly suspended from service from July 5, 1969 to September 4, 1969.

2. That accordingly, the Carrier be ordered to compensate the aforementioned employe for all time lost from July 5, 1969 to September 4, 1969 and that this suspension be removed from his personal employment record.

**EMPLOYEES' STATEMENT OF FACTS:** Carman W. Webber, Jr., Birmingham, Alabama, hereinafter referred to as the Claimant, was employed by Southern Railway Company, hereinafter referred to as the Carrier, at Birmingham, Alabama, and was removed from service July 5, 1969 to September 4, 1969, charged with "sleeping while on duty and failure to protect your assigned duties as Car Inspector at Norris Yard between the hours of 12:00 P. M. and 8:00 A. M. July 5, 1969."

Formal investigation was set for 10:00 A. M. Wednesday, July 9, 1969; after several postponements which were mutually agreed upon by all concerned, the formal investigation was held on July 31, 1969, at 2:00 P. M.

In a letter dated August 13, 1969, Claimant was advised by Mr. J. T. Freeman, Carrier's Master Mechanic, that he was guilty as charged and, therefore, was suspended from service for a period of sixty days from July 5, 1969 to Thursday, September 4, 1969.

In a letter dated September 26, 1969, Claimant's Local Chairman filed claim on behalf of Claimant with Carrier's Master Mechanic, Mr. J. T. Freeman.

This dispute was subsequently handled with all of the Carrier's officers designated to handle such matters in compliance with the current Agreement, all of whom have refused or declined to make satisfactory settlement.

Sleeping on duty is a serious offense which in many instances justifies discharge. Second Division Award 4629.

On Page 6 of Second Division Award 4629 the Board held:

"Sleeping while on duty is generally regarded as an offense which justifies discharge and, since the claimant had only about three years service with the Carrier, the penalty of discharge cannot be considered excessive."

Carman Webber was observed sleeping while on duty on July 5, 1969 and had been in Carrier's employ approximately three years (he established seniority on June 27, 1966). Thus, the facts in the instant case bear a striking similarity to those present in Award 4629 with one exception, Carman Webber was not discharged, he was only suspended for sixty days. If discharge was justified in Award 4629, a sixty day suspension was justified in the instant case, particularly when Carman Webber's prior disciplinary record is considered. This record indicates that he was disciplined for sleeping on duty on October 7, 1967 and January 1, 1968. He was suspended for fourteen days for the October 7, 1967 offense which was subsequently modified to a seven day suspension and for sixty days for the January 1, 1968 offense. In view of the serious nature of Carman Webber's offense and his prior disciplinary record, a sixty day suspension, it is submitted, was indeed lenient and should not be disturbed for that reason.

1. The preponderance of the evidence establishes that Carman Webber was sleeping while on duty on July 5, 1969.
2. The failure to request the presence of Carman Williams as a witness at the investigation held on July 31, 1969 did not deprive Carman Webber of a fair and impartial hearing.
3. The sixty day suspension imposed on Carman Webber was reasonable when the nature of his offense and prior disciplinary record are considered.

On the basis of the foregoing, the claim for time lost by reason of Carman Webber's suspension 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.

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

Claimant was suspended from service for sixty days for being asleep while on duty on July 5, 1969.

In their Rebuttal Submission to this Board, the Carrier refers to subsequent acts of the Claimant. The subsequent acts of the Claimant will not be considered by the Board.

The Employes contend that the Carrier has not sustained its burden of proving Claimant's guilt. They further contend that there is no proof that Claimant failed to perform his duties properly on the date in question.

There is evidence before the Board that Mechanical Department Foreman L. R. Vernon reported that he had found Claimant asleep on three occasions after commencing his tour of duty at 12:00 A. M.

There is some conflict in the record as to whether or not Claimant properly performed his duties on the date in question.

We find the language in Second Division N.R.A.B. Award No. 4981 to be controlling. Award No. 4981 states:

"Carrier's findings are supported by Yardmaster Conrad's testimony that he found Claimant asleep on a bench in the inspectors' shanty at the time in question after having attempted without success to reach him by telephone on about eight occasions shortly before that time. Although Conrad's testimony is uncorroborated and vigorously denied by Claimant, we find it definite and credible and see no valid reason for rejecting it. Carrier is entitled to rely on the observations of its supervisory employes and there is nothing in the record to indicate that Conrad's testimony was prompted by any improper motive or bad faith. It is not this Board's function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible, though controverted, evidence."

We cannot find Carrier's action to be arbitrary or capricious and will not disturb the discipline imposed.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June, 1972.