

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

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That under the terms of the applicable Agreement the Carrier unjustly suspended Locomotive Carpenter K. D. Alexander for 60 days.
- (2) That accordingly the Carrier be ordered to compensate K. D. Alexander for the 60 days and for any overtime he was deprived of during this 60 days period.

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, an employee with 20 years of unblemished service, was given a 60 day suspension for sleeping on duty.

Testimony of two Carrier officials was that they observed Claimant reclining in an overstuffed chair, feet up, eyes closed, and snoring between 4:03 a.m. and 4:20 a.m. They awakened Claimant with considerable difficulty. They further testified that shortly after Claimant was awakened, he told them that he was on a coffee break and "fell asleep". They also testified that he had already had his lunch.

At the hearing Claimant denied telling the Carrier officials that he had already had his lunch or that he had fallen asleep. Rather, Claimant testified that he was called to work on an engine from 2:00 a.m. to 2:20 a.m. (his regular lunch period) and was on his lunch break from 4:00 a.m. to 4:20 a.m.

In order to sustain this claim this Board would have to reject as fabrication or ignore the testimony of the two Carrier officials and accept only the testimony of Claimant. This we are not empowered to do. It has been held many times on this and other Divisions that it is not the function of this Board to weigh the evidence as if it were an original hearing. It is our function to determine only whether there is evidence of substantive and probative value which, if believed, would sustain Carrier's actions.

However, the Board finds that, under the particular circumstances of this dispute and given Claimant's long years of unblemished service, the discipline was excessive and should be reduced to twenty days. Further, Carrier should compensate Claimant one days' pay for each of the days unjustly suspended with no allowance for casual and unassigned overtime.

A W A R D

Claim disposed of per findings herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of May, 1975.