

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 H. L. Dennard, Macon, Georgia was unjustly dismissed from service June 29, 1973.
2. That accordingly the Carrier be ordered to return Carman H. L. Dennard to service with all rights unimpaired including benefits under Travelers Insurance and that beginning June 29, 1973 he be paid for all time lost.

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, a regularly assigned Car Inspector at Carrier's Brosnan Yard, Macon, Ga., was charged with "failure to perform your duties inasmuch as you were found to be sound asleep in the north carmen's locker room while there was work to be performed in the train yard". At the hearing held relative to the foregoing charge, Car Foreman R. I. Manry and General Foreman R. J. Jones testified that being unsuccessful in their attempt to communicate with claimant via the radio at approximately 2:15 AM on June 29, 1973, they thereupon proceeded to the north shack where they found claimant sound asleep on a bench in the locker room with a rolled up coat under his head at the same time that car inspector work remained to be performed in the train yard. Claimant admits that he was laying down on a bench in the locker room but denies that he was asleep. Rather, he states that he had taken medication for pain from a tooth that had been extracted and he was giving it time to take effect. Based on the evidence adduced at the hearing claimant was dismissed from service with the Carrier.

The issue for this Board to determine is whether claimant was dismissed for just and sufficient cause as required by Rule 34 of the governing Agreement between the parties. There was substantive evidence adduced at the hearing to uphold the charge preferred against the claimant. And, in the opinion of this Board, such substantive evidence was not adequately rebutted by the claimant.

Having established that claimant was asleep in the locker room on the morning in question, Carrier examined claimant's prior service record and concluded therefrom that dismissal from service was justified. It is indeed true that claimant's disciplinary record is far from laudatory. Since entering Carrier's employ in November, 1967 he has been reprimanded for improper work performance, excessive absenteeism and tardiness. Furthermore, this was claimant's second offense of being found sleeping while on duty. Based on claimant's past service record his dismissal was neither arbitrary, unreasonable nor excessive.

Yet, this Board is inclined to grant claimant one last opportunity to prove that he should remain in Carrier's employe. He is hereby put on notice, however, that this Board considers his service record with the Carrier to be woefully inadequate and that if he wishes to continue as a Carrier employe his record must drastically improve. If this does not occur then Carrier, upon proof of continued dereliction of duty, will certainly act within their managerial discretion in dismissing claimant from service. Claimant is, therefore, ordered restored to service but without any compensation for wages lost while so held out of service.

A W A R D

Claim sustained to the extent indicated, supra, in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1976.