

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the Current Working Agreement the Carrier unjustly dismissed Carman Walter M. Szymanczyk on November 8, 1974.
2. That Carrier be ordered to reinstate Carman Walter Szymanczyk to service, compensate him for all time lost beginning October 21, 1974, the day he was initially withheld from service, make him whole for seniority rights, vacation rights, sick benefits, health, welfare and life insurance benefits, and all other benefits he would have received had he not been unjustly withheld from service.

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.

On claim date, Claimant was assigned to inspect and make repairs to a certain trailer. Claimant's foreman went to the trailer and found Claimant on the floor of the trailer asleep. The Foreman left the trailer and returned with his Assistant Foreman for the purpose of witnessing Claimant and found that Claimant was lying on the trailer floor asleep. Claimant was awakened and relieved of duty for the rest of the day. A formal investigation was scheduled wherein Claimant was charged with sleeping on duty. The investigation resulted in dismissal of Claimant from service. The record reveals that Claimant's service record was reviewed and that during Claimant's three (3) years and ten (10) months' service with Carrier, Claimant had been given two (2) prior formal investigations resulting in a ten (10) day deferred suspension and a fifteen (15) day actual suspension for not properly performing his work. Claimant defended the action by testifying that he had been taking medication; that because of the medication,

he was groggy and although he denied being asleep, he did not contest the allegation that he was not awake. The record reveals sufficient evidence to justify the finding of guilty. The result of the investigation was appealed to the Car Foreman and denied by said Car Foreman on February 7, 1975. The appeal was then filed with the Vice President - Administration and declined by said Vice President - Administration on September 18, 1975. Article V of the National Time Limit Rule Agreement merely states that Carrier will disallow claims - not Officer. Therefore, this claim is not subject to dismissal. Therefore, it is the opinion of this Board that Claimant should be restored to service without pay for time off.

A W A R D

Claimant restored to service without pay from date of dismissal until thirty (30) days from date of this Award.

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 25th day of January, 1977.