

The Second Division consisted of the regular members and in addition Referee Rolf Valtin when award was rendered.

Parties to Dispute: ( System Federation No. 99, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer H. M. Miller was unjustly dismissed by the Illinois Central Gulf Railroad on September 3, 1976 following an investigation which was held on September 2, 1976.
2. That accordingly the Illinois Central Gulf Railroad be ordered to return Laborer H. M. Miller to work immediately with pay for all time lost, restoration of full seniority and all benefits he would have been entitled to.

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 waived right of appearance at hearing thereon.

The claimant was a Laborer with about  $2\frac{1}{2}$  years of service with the Carrier at the time of his discharge. He was discharged for sleeping on the job.

We see no proper basis for reversing or modifying the discharge. In the first place, the claimant had compiled a poor attendance record. The offense which produced his discharge is correctly viewed, not as an isolated incident in an otherwise satisfactory work record, but as the climax of a pattern of unreliability. And in the second place, the sleeping in this instance, fully established by the evidence, must be characterized as an aggravated instance of going to sleep on the job. The claimant had stretched out behind locked doors, could not be found when his services were needed, was not aroused in the face of calling his name and knocking on the door, and was awakened only when a foreman climbed through a window and shook him. When these things are coupled with the fact that the claimant was a relatively short-service employe, we do not see how we can realistically direct his reinstatement.

The Organization has challenged the Carrier's invocation of certain Carrier rules covering a variety of offenses. We do not believe that the case can properly be viewed as rising or falling on the legitimacy of the rules, either in terms of their reasonableness or in terms of their standing relative to the collective-bargaining Agreement. What the claimant was guilty of need hardly be expressly proscribed to be recognized as an offense. With or without the existence of the rules, the claimant had subjected himself to discharge. We are not prepared to void the discharge by the back-door means which the Organization is urging.

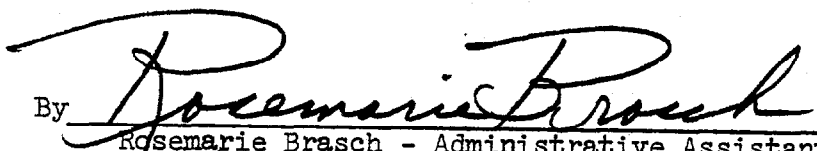
A W A R D

Claim denied.

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 31st day of July, 1978.