

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

- (a) That Machinist K. N. Alwine was improperly disciplined by Carrier's imposition of ten (10) days' suspension.
- (b) That, accordingly, Machinist K. N. Alwine's record relative thereto be cleared.

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.

Following proper investigative hearing, Machinist K. N. Alwine was disciplined by imposition of a 10-day deferred suspension for "sitting on chair with eyes closed not performing any work at 6:28 a.m. on 11-2-76".

The record bears out that the Claimant was indeed sitting on a chair with his eyes closed and was not performing work at the moment and date specified. The record further developed the facts that the Claimant had some time earlier suffered an eye injury and had been given medicine for use in his eye as needed. Further, on the day in question, he had reported to work at 8 p.m., instead of his usual 11 p.m. starting time, and thus had been at work in excess of ten hours at the time of the reported incident.

The penalty involved was mild, and the Board has great reluctance to substitute its judgment for that of the Carrier in disciplinary matters. Nevertheless, the record is barren of any proof that the Claimant was neglectful of his duties or that he failed to have reasonable cause to be in the position he was discovered at 6:28 a.m. No other accusation is made against the Claimant. After careful examination of the record of the investigative hearing, the Board fails to find adequate justification for any disciplinary action.

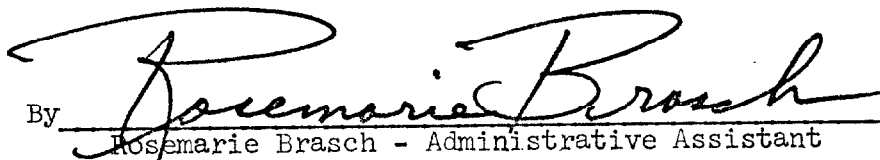
A W A R D

Claim sustained.

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 8th day of November, 1978.