

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

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the Current and Controlling Agreement, Service Attendant Roy Rivers, Jr., was unjustly dismissed from the service of the L&N Railroad Company on January 25, 1977, after a formal investigation was held on January 5, 1977, in the office of Mr. C. E. Stewart, Master Mechanic.
2. That accordingly, Service Attendant Roy Rivers, Jr., be restored to his regular assignment at Sibert Shops, Mobile, Alabama with all seniority rights unimpaired, vacation, health and welfare benefits, hospital and life insurance be paid and compensated for lost time effective January 25, 1977.

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 was dismissed on two grounds: (1) that he had brought a woman onto company property without permission; and (2) that he was sleeping while on duty. On the day in question, Claimant was assigned to the third shift, 11:00 p.m. to 7:00 a.m.

With respect to the first charge, a review of the record discloses that the woman in question was Claimant's common-law wife who drove Claimant to work on the date in question and accompanied him to the locker room.

A Carrier Special Agent testified that he observed the woman "for only 4 or 5 minutes while actually on our property." When asked whether he observed "anything immoral or indecent" about her appearance, he answered "no, sir".

Claimant and his common-law wife testified that she was helping him transfer clothing from the car to the locker room when the Special Agent entered the locker room and questioned him as to her identity. The Special Agent left the locker room, and she then left the premises.

The record also indicates that the Lead Machinist on the third shift saw Claimant and his common-law wife in the locker room shortly after the shift starting time and upon learning of their relationship, and that she had driven him to work, returned to his office without requesting her to leave the property, since he assumed that she was leaving.

With respect to the second charge, sleeping while on duty, we glean the following from the record:

At about 2:00 a.m., the same Special Agent who had earlier entered the locker room and found Claimant with his common-law wife, asked the Lead Machinist to accompany him to ask the Claimant some questions. When the two men arrived at the locker room, according to the Lead Machinist, the Claimant "had his head on the table asleep".

The Lead Machinist also testified that he had not been looking for the Claimant prior to the Special Agent's request; that there was no set time for lunch breaks (employees taking them at opportune times "when it doesn't interfere with our work duties"); that the Claimant was not interfering with operations at the time he was found asleep; that Claimant could have been on his lunch break; and that "some employees sleep on their lunch break".

While the record supports the Carrier's findings, it certainly is not of sufficient force to warrant such extreme disciplinary action as dismissal. Under the circumstances hereinabove described, we will direct that Claimant be reinstated immediately to the post he held at the time of his dismissal with seniority and all rights unimpaired, but without back pay.

A W A R D

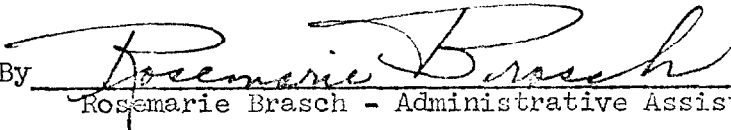
Claim sustained to the extent indicated in the Findings.

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Award No. 7896
Docket No. 7758
2-L&N-FO-'79

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 19th day of April, 1979.