

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Firemen & Oilers)  
                          { Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That under the controlling agreement Laborer, M. F. Marbley, was unjustly dismissed from the service of the Carrier on October 17, 1975.
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, M. F. Marbley, at the pro rata rate of pay for each work day beginning October 17, 1975, until he is reinstated to service and in addition to receive all benefits accruing to any other employees in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, M. F. Marbley, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Marbley an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 suspended from service the morning of October 9, 1975, pending a formal investigation scheduled for and held on October 14, 1975. Claimant was charged with sleeping while on duty during his third shift work assignment commencing at 11:00 PM and ending 7:00 AM on October 9, 1975. Following the investigatory hearing, Claimant was adjudged guilty as charged and was dismissed from service of the Carrier effective October 17, 1975.

At approximately 5:30 AM, October 9, 1975 Claimant's supervisor was notified that a laborer's services were needed. In response to this request, the supervisor commenced trying to locate the Claimant. Being unable to find Claimant in his assigned work area, Claimant's supervisor proceeded to the employees' locker room where he eventually discovered Claimant seated in a chair at the end of a double row of lockers. Upon observing Claimant was asleep in the chair, the supervisor proceeded to the office of the General Foreman to apprise him of the situation. Together, the supervisor and the General Foreman returned to the locker room, stood close to Claimant and conversed in normal tones about Claimant's sound sleep and then proceeded to awaken Claimant by calling his name in a loud voice. The General Foreman instructed Claimant to mark off of work as of 5:45 AM, October 9, 1975 and informed him that he was suspended from service pending a formal investigation.

The Organization contends that Claimant had secured permission from his supervisor to be in the locker room so as to allow Claimant to apply medication to his ailing foot. The Organization acknowledges Claimant's own admission that after tending to his foot, he did, in fact, proceed to fall asleep, but suggests that Claimant's sleepiness was induced by Claimant's having taken four (4) of sixteen (16) antibiotic pills prescribed to him during the time prior to his going to the locker room. In addition, the Organization argues Claimant was not given a fair and impartial hearing.

Carrier maintains that in addition to the instant claim being procedurally defective, the claim is totally lacking in merit. Carrier denies Claimant had permission to be in the locker room any time the morning of October 9, 1975. Rather, the Claimant, according to Carrier had specifically been instructed on preceeding nights that he was not allowed to go to the locker room without first requesting permission to go from his supervisor. Carrier takes the position that sleeping on the job is a serious offense, especially when committed by a short-service employee such as the Claimant, whose temure with the Carrier totals approximately eighteen (18) months. In addition, Carrier points out that during the eighteen (18) months of Claimant's employment, Claimant has compiled a very poor work record, having committed a number of offenses including sleeping on the job on other previous occasions. Finally, the Carrier asserts that Claimant was afforded a fair and impartial hearing on October 14, 1975.

Upon examination of the record, the Board concludes the evidence substantially supports the finding of Claimant's guilt adduced at the investigatory hearing of October 14, 1975. It is clear that the latest offense committed by Claimant, the subject of which is here before us for consideration, coupled with Claimant's past offenses over the very short period of time he was employed by Carrier, is more than a sufficient indication that Claimant was not diligent, but indeed negligent, in performance of his duties and that he lacked a serious attitude toward his work.

It is our belief that sleeping on the job is a most serious offense for which Claimant was given due warning by Carrier on several other occasions.

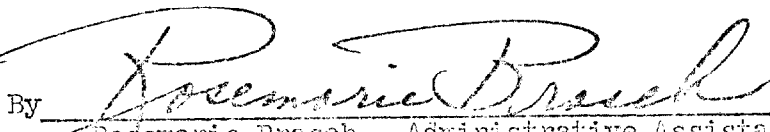
Therefore, this Board does not find the discipline assessed of dismissal the least bit harsh or excessive. Neither does this Board find any action by the Carrier in the handling of this claim at any level to have been arbitrary, capricious or discriminatory. In finding Claimant received a fair and impartial hearing, we rule to deny the instant claim.

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 13th day of June, 1979.