

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Federation No. 117, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Western Pacific Railroad Company

Dispute: Claim of Employee:

1. That under the current Agreement, Mechanical Department Electrician G. V. Lemieux was unjustly treated when he was dismissed from service on February 23, 1977, following investigation for alleged sleeping on duty on Unit WVP-3007 at approximately 4:40 a.m. on Friday, January 28, 1977.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
 - (b) Pay employe's group medical insurance contributions, including group medical disability, dental, dependent's hospital, surgical and medical, and death benefit premiums for all time that the aforesaid employe is held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employe.

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 employ 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 record shows that on January 28, 1977, the Claimant was observed in the early morning hours on the floor of an engine cab for several minutes; such observation being verified by more than one witness. The Claimant admits as much, but asserts he was in a sitting position for the purpose of putting drops into an eye -- a claim apparently not raised at the time of the incident. Carrier witnesses, in contrast, contend he was laying down with his arm used as a headrest. The Organization asserts a variety of defenses: the charge was not precise; no special rule was cited as being violated; the Carrier was purposefully looking for "sleepers;" and, the charge was not proven, given the lack of light in the area involved. A careful review of the record fails to reveal a basis for affirming any such defense. As to the imposition of removal as discipline, we note that the Claimant was no stranger to this problem, having been suspended for sleeping some fourteen months prior. We find no basis to disturb the Carrier's judgment in this case.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1979.