

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

Parties to Dispute: (System Federation No. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen and Oilers)
(Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement A. L. Hanna, Laborer, was unjustly dismissed from the service of the Carrier effective February 8, 1978.

2. That accordingly the Carrier be ordered to reinstate A. L. Hanna with seniority unimpaired, made whole for all wages lost, vacation rights, Railroad Retirement benefits including sickness benefits. Also that A. L. Hanna's record be cleared and be provided with any other benefits that are a condition of employment that he would have earned under the current agreement had he not been disciplined.

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 discharged after an appropriate hearing on the following charges:

1. 1. Violation of that part of General Rule "N" of the Rules and Regulations of the Washington Terminal Company, when at about 5:50 A.M., Friday, December 16, 1977, while assigned as Laborer, Enginehouse, you participated in an unauthorized and unnecessary activity, when you were found to be asleep on the South end of Motor 969 in the Fireman's seat.

2. Violation of that part of General Rule "N" of the Rules and Regulations of the Washington Terminal Company, "Falsifying reports," when you turned in your timecard for 12:00 A.M. to 8 A.M., Friday, December 16, 1977, and you could not be found anywhere on the property after 5:50 A.M. this date.

3. Violations of that part of General Rule "O" of the Rules and Regulations of the Washington Terminal Company, "No employee will be absent from duty without permission," when on Friday, December 16, 1977, you were absent from your assignment as Laborer, Enginehouse from 5:50 A.M. until 8:00 A.M.

The hearing, originally scheduled for January 5, 1978, was postponed at the request of management to January 13, 1978. On that date, neither the claimant nor his representative appeared. Testimony was taken from one company witness and the hearing was recessed until January 17, 1978, in order to give the Claimant and his representative another opportunity to be present and present their evidence. On that date a full and complete hearing was conducted. A transcript was kept and made a part of this record. As a result of that hearing, the penalty herein complained of was assessed on February 8, 1978.

During the course of the testimony, two supervisory personnel testified that they jointly observed Mr. Hanna slouched in the Fireman's seat of Motor 969. A flashlight was directed on his face and he was observed for a period of time, approximately five minutes. Finally, he was awakened by one of the supervisors, who "took him by the right arm and shook him." The time was about 5:50 A.M., and no conversation ensued among the men except for directions given to the Claimant by one of the supervisors, that there was equipment on #8 which he was to service. The testimony indicates that Mr. Hanna did not follow those directions and the work was accomplished by another workman. At approximately 6:30, the supervisor again searched for the Claimant but was unable to find him anywhere on the property. Mr. Hanna did, however, turn in a timecard showing that he worked until 8:00 A.M. It should be noted that this card was not given to the supervisor in routine fashion, but was deposited in the timecard box on the wall.

In defense, the Claimant maintains that he was not asleep but thought other employees were engaged in some sort of horseplay and he, therefore, refused to acknowledge their presence by acting awake. He further stated he was a little sick and dazed at the time. His testimony indicates that he then proceeded to the Burro Crane turntable in accordance with instructions he claimed the supervisor issued. These instructions were denied by the supervisor.

Upon arrival at the turntable he found himself alone and since it took two men to perform the operation, he assumed they would send someone to help him. Assistance did not arrive and so he waited until 8:05 A.M., checked out and departed the property. The supervisor had testified that he looked for him in such location but could not find him. At this point, Claimant stated he had a witness who would affirm his story. He was admonished by the Carrier that this was serious and the witness should have been present. The hearing proceeded while the witness was called from work to testify. The witness refused to testify that the Claimant was observed on the turntable on that date in question. He stated that he had seen Mr. Hanna at the place in question but could not remember the day "as every day is like another except payday, as far as I'm concerned." This could not be termed corroboration of the Claimant's position in the face of direct and explicit testimony by the supervisory personnel.

On the basis of the entire record, the Board finds:

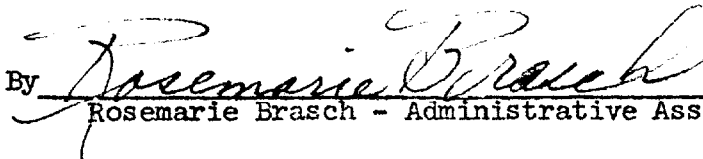
1. That the Claimant was provided a complete and fair hearing.
2. That the weight of probative evidence supports the charges.

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 19th day of December 1979.