

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8212
Docket No. 8100
2-CR-CM-'79

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

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

(a) That the Carrier violated the controlling agreement when on August 11, 1977, it assessed 30 days actual discipline to Coach Cleaner Michael A. Johnson, as a result of a hearing and investigation conducted on August 2, 1977.

(b) That accordingly, the Carrier be ordered to reimburse the Claimant for the equivalent amount of compensation he would have earned during the 30 days of his suspension, as well as any other compensation the Claimant would have earned during the 30 day period he served as discipline days lost to be forwarded towards his vacation, remove all record of discipline from his service record, and Claimant's service record be restored unimpaired, plus 6% interest compounded on a daily basis, plus any overtime he would have earned during the period he was off.

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, Michael A. Johnson, is employed by the Consolidated Rail Corporation at its repair facility in Reading, Pennsylvania.

On July 28, 1977, Claimant received a notice to report for a hearing and investigation on August 2, 1977. That notice reads in pertinent part as follows:

"You are hereby notified to present yourself for hearing and investigation in connection with your violation of General Notice B, C, and D, and Rules 4, 5, and 7 of Reading Company Rules for the guidance of all employees which occurred on 27 July, 1977 at Wayne Junction Electric Car Shop when you were found asleep in Car M.U. 9014, at 2:45 P.M., to determine your responsibility, if any, in the matter...."

The hearing proceeded according to the notice and as a result, the Carrier assessed the penalty herein complained of.

Rule 4 is the one most pertinent to the allegation here under consideration. That rule reads in part:

"Undivided attention to duty is essential to safety and efficiency. Sleeping, assuming an attitude of sleeping...while on duty is prohibited."

The other rules are peripheral to this rule for the purposes of this discussion and deal with neglect of duty and devotion to the Company's service while on duty. They need not be expanded upon in this award.

The organization raises certain objections to the specificity of the charges and the manner in which the questioning was conducted. It seems to this Board that the charge of sleeping on duty is specific. Further, the conduct of the hearing had no bearing on the determination of guilt or innocence. The Claimant testified that he was, in fact, asleep during duty hours. Based on the entire record, the Claimant did violate the rules as charged and there is nothing in the record to give validity to an excessive discipline claim.

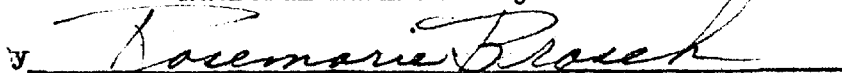
1. The hearing was appropriate insofar as the gravamen of the matter under consideration is concerned.
2. The Claimant, by his own admission, did violate Rule 4 and peripherally the other rules outlined in the notice of hearing.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of December 1979.