

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

Parties to Dispute: { System Federation No. 99, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer L. E. Hill was unjustly dismissed from service on April 1, 1978.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to return Laborer Hill to work immediately, with pay for all time lost, restoration of full seniority and all benefits he would have been entitled to.

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 employees 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, Mr. L. E. Hill, is a laborer for the carrier. On April 4, 1978, he was given a notice of hearing which read in pertinent part:

"Please arrange to attend a formal investigation ... at Waterloo Iowa, on Tuesday, April 11, 1978... for the purpose of determining whether you were sleeping on duty on or about 5:30 PM on Saturday, April 1, 1978, in the cab of Locomotive 8096 at Waterloo, Iowa, and whether you were argumentative and threatening to Mechanical Foreman G. H. Archer, and whether you used tranquilizers, medicine, sedatives, or other related substance while subject to and/or on duty April 1, 1978."

The hearing proceeded as planned and resulted in the dismissal from service herein complained of.

The claimant and organization readily concede that he was sleeping on duty as charged. As a defense they point out that Mr. Hill had pyorrhea of the gums and had taken several tylenol which caused him to be drowsy and therefore his sleep

was caused by a condition beyond his control. They further contend that the claimant was not abusive or threatening and the carrier failed to produce any witness other than the mechanical foreman who could testify to such actions.

The record indicates that it was very difficult to awaken the defendant. The foreman first tried to awaken him by calling him by name several times. He then left the cab and obtained a witness. These two successfully aroused him but he immediately fell asleep again. The foreman upon advice from his superior again went to the engine cab with a policeman. These two successfully awakened the claimant and he left the property. Mr. Hill testified that he had taken several tylenol before going to work and was aware that such medication made him drowsy. He did mention to his supervisor that he had taken some tylenol but failed to inform him that this relatively harmless drug could produce the effect herein noted. The claimant, in further testimony, indicated that he had very little recollection of being awakened the first time. He was obviously in a very confused state of mind and it is clear that the medication he had taken greatly affected his performance. With respect to the argumentative and abusive language, Mr. Hill testified that he might have been a little loud and did say that the foreman was prejudiced but didn't believe he had made all the statements claimed by the supervisor. In view of the condition of the claimant at the time as revealed by the record, this Board must give credence to the testimony of the supervisor.

It is obvious from the foregoing that claimant had seriously breached rules devised to protect him as well as other employees and assure a productive operation. The carrier was justified in assessing disciplinary penalty. Based on the entire record we are unable to conclude that the penalty constituted arbitrary or unjust action.

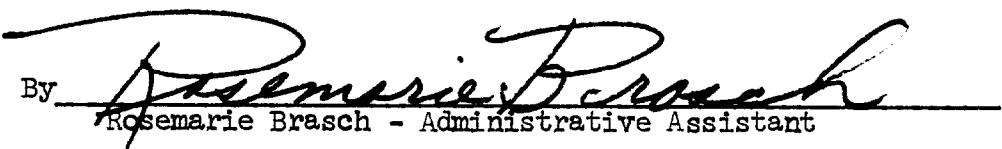
A W A R D

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 March, 1980.