

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

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated Rule 34 of the controlling agreement when they unjustly dismissed Carman J. H. Cook from their service December 30, 1977, following investigation held December 28, 1977.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Cook to service with seniority rights unimpaired and compensate him for all time lost since December 30, 1977, until returned to service.

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, Mr. J. H. Cook, is employed by the carrier as a carman at its Englewood Yard, Houston, Texas. On December 5, 1977, he received a notice of hearing which read:

"You are charged with responsibility for being asleep while on duty at approximately 4:30 A.M. at the West End of North Yard, Englewood Yard, which may be a violation of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company, while employed as Carman, on December 5, 1977. Investigation will be held at 8:30 A.M. Monday, December 12, 1977, in the office of Superintendent, Room 216, SP Building, 913 Franklin Avenue, Houston, Texas."

At the request of the organization the hearing was postponed and eventually held on December 28, 1977. The claimant did not attend the hearing on that date and the organization requested that the hearing officer again postpone the session in order for the grievant to be heard. The request was denied, objection noted in the transcript, and the claimant was heard through his representatives. The organization raises the defense that the hearing was tainted by the absence of the claimant. This Board cannot so find. The claimant was given adequate notice and the hearing was postponed once in order to accommodate him. Further, there was no good reason given for his absence. In fact, the organization did not know why he failed to appear. Under these conditions, adequate opportunity for appearance was provided and the carrier was within its legal rights to continue the investigation.

Rule 810 reads in pertinent part:

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping."

Sufficient evidence was presented at the hearing to determine that the claimant was, in fact, asleep for some brief period of time and was awakened by the trainmaster. The rule was violated and some form of disciplinary action was warranted. Based on the entire record, this Board finds that permanent dismissal is not appropriate. The claimant has suffered financial loss since his separation from the carrier and it is hoped that such loss will be remedial in nature. Claimant should be warned, however, that transgression of such rules is a serious offense and future violations may invoke a heavier penalty.

A W A R D

Claimant will be returned to his position without compensation for lost service.

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 26th day of March, 1980.