

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Firemen & Oilers)  
{ Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employee:

1. That in violation of the current agreement, Laborer Essam E. Attia was unjustly suspended from the service of the carrier on November 23, 1978 and dismissed from all service of the carrier following hearing held on November 30, 1978.
2. That accordingly the carrier be ordered to make Laborer Essam E. Attia whole by restoring him to the carrier's service with all seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired. Compensated for all lost time plus 10% annual interest and also that he be reimbursed for all losses sustained account of loss of coverage under health and welfare and life insurance agreements during the time he was unjustly held out of 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. Essam E. Attia) was found by foreman Galzerano lying down in a bunk in a caboose with his eyes closed during his normal working time. The foreman had gone looking for the claimant after he (the claimant) failed to answer a call on the radio control. After Mr. Galzerano first observed the claimant, he called for Mr. Snapp (police agent), who responded and also observed the claimant lying down, eyes closed, on the bunk. The claimant did not respond until both the foreman and Mr. Snapp were in the cabin shining their lights on his eyes.

The claimant admitted himself that he was probably asleep and may have been "snoring". He did not, at this time, mention he was in pain, or taking medication. This was forthcoming in the investigation as the reason for his lying down and his inability to notify control of his physical condition.

There is no question the claimant was asleep on the job. We cannot excuse his failure to notify control on the basis of the evidence presented.

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 6th day of August, 1980.