

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Brotherhood of Railway Carmen of the United
States and Canada
{
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended Carman Barry Montgomery, Pensacola, Florida, from service March 2, 1979, following an investigation conducted on February 23, 1979, in violation of the Controlling Agreement.
2. That Carman Barry Montgomery be returned to service with pay for all time lost and all rights restored as provided by Agreement Rules.

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.

Following an investigative hearing conducted in a fair and proper manner, Claimant was dismissed from service on March 2, 1979 under charge of sleeping while he was supposed to be on duty. The Carrier cited the Claimant as being in violation of General Regulations B and C, which read in part as follows:

"B. Employes who are negligent or indifferent to duty
... will not be retained in the service.

C. Employes must be alert, devote themselves exclusively to the service, give their undivided attention to their duties during prescribed hours ... in matters pertaining to their respective branches of the service."

Review of the record of the investigative hearing shows that a Carrier supervisor, after looking for and failing to find the Claimant in his usual place of work, discovered him in the trainmen's locker room and determined that the Claimant was asleep. The Claimant's testimony as to his activity at that time was not convincing to the Carrier and is not so to the Board.

There is no need to consider the issue of severity of penalty since the Carrier returned the Claimant to duty without pay for lost time on November 14, 1979.

There is no basis on which to interfere with the Carrier's original disciplinary decision.

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 1st day of October, 1980.