

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United
States and Canada
(
(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 Mason Hall from service on December 11, 1978, following investigation held on November 28, 1978, Houston, Texas.
2. That accordingly the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Carman Hall as follows:
 - a) Compensate him in the amount of five (5) days per week at pro rata rate beginning December 11, 1978 until returned to service;
 - b) Return him to service with full seniority rights;
 - c) Make him whole for all vacation rights;
 - d) Make him whole for all health and welfare and insurance benefits;
 - e) Make him whole for pension benefits including Railroad Retirement and Unemployment Insurance;
 - f) Make him whole for any other benefits that he would have earned during the time he was 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, who has worked for the carrier for almost ten years, was a car inspector at the carrier's Englewood Yard. On November 28, 1978 a formal investigation was held and, on December 11, 1978, the carrier dismissed the claimant from service for sleeping while on duty in violation of Carrier Rule 810. The offense allegedly occurred between 5:25 a.m. and 5:45 a.m. on October 31, 1978.

The organization urges this Board to reinstate the claimant with full back pay and all benefits because the notice of charge was defective and, on the merits, the evidence demonstrates that the claimant was praying instead of sleeping. The carrier argues that it has fully complied with Rule 34 and that the evidence overwhelmingly shows the claimant violated Rule 810. Upon reviewing the record and all applicable rules and authorities, we conclude the claimant was sleeping while on duty and we affirm the carrier's assessment of discipline.

The notice of charges, sent to the claimant on November 8, 1978 sufficiently apprised the claimant of the charge. Rule 810 is specifically mentioned in the notice. A copy of the notice was sent to the organization's local chairmen and the claimant was given an opportunity to have the representatives of his choice at the hearing. Indeed, these representatives ably and vigorously defended the claimant.

The fourth paragraph of Rule 810 states:

"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."

The claimant was working the night shift on October 30-31, 1978. The trainmaster on duty observed the claimant in a reclining position and asleep at 5:25 a.m. in the North Checker's shanty. After obtaining another witness, the trainmaster returned to the shanty with the Assistant Terminal Superintendent at about 5:45 a.m. The claimant appeared to still be asleep. The claimant testified that he was sitting and his eyes were closed to pray. It is not the province of this Board to resolve the credibility of witnesses. Second Division Award No. 6372 (Bergman). Where there is conflicting testimony, our review is limited to a determination of whether there is substantial evidence to support a finding that claimant violated the work rule. Second Division Award No. 6408 (Lieberman). Since claimant was twice observed to be sleeping (and by two witnesses the second time), the evidence clearly confirms that claimant violated Rule 810.

Sleeping while on duty is a serious offense. The carrier must rightfully rely on employees, stationed throughout a large railroad yard, to vigilantly remain on duty during their shifts. Second Division Award No. 8137 (Scearce). Thus, the carrier acted reasonably in dismissing the claimant and we cannot disturb the carrier's judgment in this case.

Form 1
Page 3

Award No. 8529
Docket No. 8617
2-SPT-CM-'80

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 3rd day of December, 1980.