

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

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. (a) That Carman E. E. Monhollen was improperly withheld from Service from 6:10 AM., through 7:00 AM. (50 Minutes) on September 25, 1977, and
- (b) That Carman E. E. Monhollen was then improperly suspended from service from for a period of thirty (30) days or from October 31, 1977, through November 30, 1977, inclusive, and
- (c) That the Louisville & Nashville Railroad wrongfully withheld and suspended Mr. Monhollen from service in violation of the Agreement.
- (d) That the actions of the Conducting Officer were improper and in violation of the Agreement when he failed to start and conduct the investigation as scheduled, not once but twice, 9:00 AM., September 29, 1977 and again at 10:00 AM., September 29, 1977, and then rescheduling the investigation for 9:00 October 4, 1977,
2. Accordingly, the Louisville & Nashville Railroad should be ordered to,
  - (a) Compensate him fifty (50) minutes at the straight time rate for being withheld from 6:10 to 7:00 AM, September 25, 1977, and
  - (b) Compensate him for eight hours and thirty (8' 30") at time and one-half rate account not being called for a Road Miscellaneous call on September 25, 1977, and
  - (c) Compensate him for all time lost as a result of his being suspended from service from October 31, 1977 through November 30, 1977, inclusive, or one hundred and seventy-six (176) hours at straight time rate, and ninety-six (96) hours at the time and one-half rate, or that which he would have earned had he not been improperly suspended.
  - (d) That the L&N Railroad should be advised that the Agreement between the parties signatory thereto did not show intent in the writing of Rule 34, to allow "actual days suspension", and

- (e) That due to the Carriers conducting officer failing to appear and conduct the investigation as scheduled, not once but twice, that the L&N Railroad be instructed that due to this procedural violation that the claim be remanded back to the Carrier with instruction to allow the claim as presented in its entirety.

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, Mr. E. E. Monhollen, is employed as a carman at Cabin, Kentucky. At the time of the incident under consideration he was assigned to the third shift. At approximately 5:15 a.m. on September 25, 1977 his foreman needed him to perform set and release brake test on a train. Upon entering the office to find claimant he observed him lying on his side with his eyes closed. He called him by name and shortly thereafter Mr. Monhollen sat up, listened to the foreman's instructions and accompanied him to the work site. During their discussion, while the work was being performed, claimant asked his foreman if he believed that claimant was asleep when spoken to in the office. The foreman responded in the affirmative. Mr. Monhollen informed him that if such was his belief, he should exercise his foreman's authority and remove him from service. Whereupon, the foreman did relieve him as suggested.

By letter dated September 27 Claimant was notified to appear for a formal investigation on September 29. He was charged with sleeping on duty.

After the parties met on September 29, the Carrier postponed the hearing due to the fact that the hearing officer was not available. It was rescheduled and completed on October 4, 1977.

The Organization raises two objections claiming that both actions violated Rule 34 of the Agreement which deals with disciplinary matters.

First, it claims that the suspension of Mr. Monhollen violated that rule. The rule provides that: "Suspension in proper cases pending a hearing, which will be prompt, shall not be deemed a violation of this rule." Based on the record and the fact that Claimant verbally challenged the foreman's authority, we cannot conclude that the Carrier abused its authority or the rule.

Second, the Organization views the postponement of the original hearing as a violation of Rule 34. It is not uncommon for such investigations to be postponed at the request of either party for good and sufficient reason as was the case in the circumstances here under consideration: Rule 34 contains no time limits, but simply states that the hearing will be held promptly. The time from the incident to the actual hearing was nine days. Given the necessary period of notification we view this period of time as sufficient to meet the rule requirement. Further, Claimant's rights were not jeopardized during this reasonable period of time.

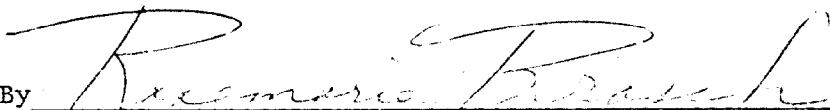
There is conflicting testimony in the record with respect to the charge of sleeping on duty. The credible evidence indicates that Claimant was lying on his side with his eyes closed. He was somewhat less than alacreative in his response to the foreman's initial approach. Further, his concern that the evidence might lead the foreman to such conclusion is evidenced by the personal challenge he later made to the foreman's judgment and authority. The preponderance of evidence indicates that Claimant had actually fallen asleep. However, his recovery was short and no harm was done to the schedule of work required. The record indicates that Mr. Monhollen had a good record with the Carrier and no previous transgressions were noted. Accordingly, we agree with the Organization that under all the circumstances surrounding this incident the thirty day suspension was somewhat harsh for a first offense.

A W A R D

The claim with respect to the initial suspension from duty is denied. Claimant will be given a fifteen (15) day actual suspension in lieu of the thirty day penalty originally assessed.

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 28th day of January, 1981.