

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Freight Car Repairman Earl Jones was unjustly assessed thirty (30) days suspension on February 28, 1979.
2. Freight Car Repairman Earl Jones was erroneously charged with sleeping while on duty on January 12, 1979.
3. That the Chicago and North Western Transportation Company be ordered to compensate Freight Car Repairman Earl Jones for eight hours pay per day dating from the date he was removed from service, (January 12, 1979), until the date of his return, (April 15, 1979), in accordance with Rule 35.

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.

On January 12, 1979, Mr. Jones was a Freight Car Repairman assigned to work from 12:00 Midnight to 8:00 A.M. At 12:15 A.M. on such date General Car Foreman G. Mallen received a telephone report that an employee had been observed sleeping in a vehicle on the north side of the tracks near the Proviso Diesel Ramp, Proviso, Illinois. Mr. Mallen started to check on the matter, but was delayed somewhat. At 1:15 A.M., however, he and Trainmaster Gary Torgerson found Claimant asleep in Claimant's vehicle in the east end parking lot, the location mentioned in the original report.

Mr. Jones was thereupon removed from service. By letter of January 31, 1979, Mr. Jones was notified to appear for investigation on February 8, 1979, relating to the stated charge:

"Your responsibility for sleeping while on duty as a Freight Car Repairman, 3rd shift, Yard 4, at approximately 1:15AM on January 12, 1979."

On the date scheduled, February 8, Carrier postponed the investigation to February 15, 1979. On February 13, Carrier postponed the hearing until February 16. On the latter date, the hearing was postponed until February 22nd at the request of Claimant's union representative, Local Chairman Alexander Novakovic. The hearing was then held on February 22nd. On February 28, 1979, Claimant was notified that after investigation of his "responsibility for sleeping while on duty as a Freight Car Repairman, 3rd shift, Yard 4, at approximately 1:15 AM on January 12, 1979", ... the following discipline has been applied: Thirty (30) days Actual Suspension (effective March 16, 1979. Return to work April 15, 1979.)"

The Organization takes the position that Claimant had not gone on duty as scheduled at midnight and was not on duty when he was discovered to be asleep at 1:15 A.M. on January 12, 1979. We support this position. The record is completely devoid of evidence that Claimant reported for duty or performed any service on such date. He was found asleep in his own car on the Company parking lot. To sustain a charge that Claimant was "sleeping while on duty", Carrier had the burden to show that Claimant was indeed on duty. It appears certainly probable that Claimant parked his automobile and went to sleep without ever reporting to his workplace or performing service. The record will not support the discipline of Claimant for the reason given by Carrier.

On January 12, Claimant was notified that he was taken out of service; however, in view of Claimant's position that he never reported for service on such date, we hold that he took himself out of service on that date and that Carrier's action was not effective until January 13, 1979. It is conceded that on January 31, 1979, Carrier told Claimant to report back for service and that Claimant failed to do so at any time thereafter. As of March 21, 1979, Claimant was terminated after another investigation.

Under all the circumstances, we hold that Claimant should be paid for time lost between, and inclusive of, the dates of January 13, 1979, and January 31, 1979.

A W A R D

Claim sustained in conformity with foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of August, 1981.