

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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. Coach Cleaner Ralph Randall was unjustly dismissed from service on March 20, 1979.
2. Coach Cleaner Ralph Randall was erroneously charged with sleeping while on duty.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Coach Cleaner Ralph Randall, with seniority rights unimpaired, and make him whole for all vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment; compensate him for all time lost plus 6% annual interest on all such lost wages; plus reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of Carrier's service dating from March 20, 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 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.

An investigation was held on March 14, 1979 to determine whether Claimant, a coach cleaner, was sleeping while on duty on March 1, 1979 when he was assigned to mop the floor of cab car #158 at the California Avenue Coach Yard, Track 17, North Yard, Chicago, Illinois. Based on the investigative record, Carrier determined that he was guilty as charged and dismissed him from service, effective, March 20, 1979. This disposition was appealed.

In defense of his position, Claimant contends that the General Car Foreman did not state exactly where the Line Foreman and Car Foreman were standing when they ostensibly observed him sleeping. He denies that he was sleeping and asserts that the General Car Foreman did not shake his pants leg to awaken him. He avers that the ammonia that was used to mop the cab floor affected his eyes, but they were not closed when he was approached by the General Car Foreman.

Carrier contends that the record conclusively establishes that he was asleep at the time since the Shop Superintendent called the General Car Foreman and requested that he go to the situs where Claimant was located. The General Car Foreman testified that he observed Claimant seated in the northeast section of the upper level of Cab Car #158 and that when he went into the car and stood directly underneath Claimant, he called Claimant twice without any response and reached up and shook his leg when he called him the third time. The General Car Foreman testified that he could see Claimant's face clearly and that his eyes were closed. This testimony was confirmed by the Car Foreman.

In our review of this case, we concur with Carrier's position. The record firmly shows that Claimant was asleep at approximately 10:30 A.M. on March 1, 1979 when he was observed by the aforesaid supervisors and such conduct is patently violative of Rule 23 of the General Regulations and Safety Rules. The General Car Foreman recounted in painstaking detail just what occurred when he carefully observed Claimant in a sleeping position and it was pointedly corroborated by the Car Foreman. There is no indicating that any of these officials harbored any animus toward the Claimant or any evidence that would affect the credibility of their statements. The General Car Foreman promptly responded to the Shop Superintendent's call to proceed to Track 17, North Yard, Cab Car #158 and when joined by the other supervisors, he found Claimant asleep. Claimant disputes the charges, but offers no proof to substantiate his defense. He merely asserts that he wasn't asleep.

In Second Division Award No. 8712, which we find relevant herein, the Board held in pertinent part that:

"The testimony of the General Foreman, Foreman and Patrolmen demonstrates the Claimant was in a position which is defined as sleeping under Rule 673. The Claimant, at the hearing, denied he was asleep. When this Board is confronted with direct conflicts in testimony, we are precluded from upsetting the Carrier's determination, unless the testimony Carrier relied upon was speculative or clearly contrary to other objective, empirical evidence. Second Division Award 6372 (Bergman). There is no reason for this Board to question the veracity of the three witnesses. Thus, we find substantial evidence in the record to prove that Claimant was asleep while on duty between approximately 5:45 P.M. and 6:00 P.M. on November 1, 1978."

We find this decision controlling. The supervisors' testimony was persuasive and uncontroverted and we are constrained by this finding to affirm Carrier's position. Moreover, when Claimant's past disciplinary record as a short term employee is factored into the disciplinary assessment, we find the instant penalty consistent with the tenets of progressive industrial discipline.

A W A R D

Claim denied.

Form 1
Page 3

Award No. 8803
Docket No. 8737
2-C&NW-CM-'81

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 October, 1981.