

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup 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. Passenger Truck Repairman T. E. Kromolicki was erroneously charged with sleeping while on duty at approximately 4:45 A.M. on July 7, 1979.
2. Passenger Truck Repairman T. E. Kromolicki was unjustly assessed thirty days actual suspension on August 22, 1979, following investigation held August 13, 1979.
3. That the Chicago and North Western Transportation Company be ordered to compensate Passenger Truck Repairman T. E. Kromolicki for the 30 days he was unjustly suspended, and remove that discipline from his record 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.

Claimant, Mr. T. E. Kromolicki, is an employee of the Chicago and North Western Transportation Company. At the time of the incident under consideration Claimant was a Passenger Truck Repairman working the third shift. On July 7, 1979 at approximately 4:45 A.M., Claimant was observed to be purportedly sleeping by Mr. R. M. Rambhajan, Carrier Shop Superintendent of M19-A Diesel Shop, and by Mr. F. Haas, General Foreman. According to the official transcript, upon request by Mr. Rambhajan, Mr. Haas woke Claimant by calling his name and shaking his arm. When Claimant was asked if he was okay, he responded in the affirmative. Late that same day, at approximately 6:45 A.M. Claimant told Shop Superintendent Rambhajan that he had been working double shifts and that he was tired. It was also at this time that Claimant was informed that he was being written up for sleeping and that he should contact his Local Chairman.

On July 9, 1979 Claimant was notified by Mr. W. H. Wonnell, Manager of Suburban Operations-Mechanical, to appear for formal investigation on July 12, 1979. The charge was that he had been in violation of Rule 23 of the General Regulations and Safety Rules. On July 3, 1979 Claimant was notified, again by Mr. Wonnell, that the investigation was postponed until August 13, 1979. Receipt of this notice was signed by Mr. H. Marta, who represented Claimant during the hearing on August 13, 1979.

Rule 23 reads as follows:

"Employees must not sleep on duty. Lying down or in a reclining position with eyes closed or covered will be considered as sleeping."

As a consequence of the hearing held on August 13, 1979 Claimant was given an actual suspension of thirty (30) days by Carrier.

It is the position of the Board that, contrary to the contention of the Organization, Carrier did prove the charge against the Claimant and Carrier established Claimant's responsibility for sleeping while on duty. Claimant did not deny that he was sleeping to the Shop Superintendent, nor to Hearing Officer J. F. Bowen during the subsequent August 13, 1979 hearing. Nor was it ever clearly established that it was a lunch break, which purportedly had not been taken at an earlier hour, when Claimant was, in fact, asleep --- aside the additional issue which a fortiori does not have to be resolved here of whether lunch break is "duty" time or not since it is a paid break.

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 March, 1982.