

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That under the current agreement Firemen and Oiler R. J. Calderon, was unjustly suspended from the service of the Carrier, from November 6, 1978 through February 4, 1979.
2. That accordingly, the Carrier be ordered to:

Compensate the aforesaid employe for all time lost from November 6, 1978, through February 4, 1979, at the pro-rata rate of the position he held at the time he was suspended.
3. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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.

On October 9, 1978, Claimant was given notice to be present at formal hearing on October 17 following, such notice reading in part:

"... in connection with your alleged failure to be in position to service units 3737, 3768, 3799, 3728, at approximately 12:35 AM, Sunday, October 8, 1978 as directed by your immediate supervisor, and your alleged sleeping while on duty at approximately 12:47 AM Sunday, October 8, 1978 while working as Laborer, 11:00 PM to 7:00 AM shift, for which occurrence you are hereby charged with responsibility which may involve violation of that portion of Rule 802 reading:

'Indifference to duty, or to the performance of duty, will not be condoned.', and

Rule 810, first paragraph, that portion reading:

'Employees must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty...', and

Rule 810, fourth paragraph, reading:

'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.'

of the General Rules and Regulations of the Southern Pacific Transportation Company, effective October 31, 1976, as posted."

The investigation was held as scheduled, and we find that Claimant was accorded due process pursuant to the Agreement. Credible witnesses testified that within a period of 45 minutes Claimant was observed on three separate occasions asleep while on duty. In each of the first two instances he was awakened but proceeded to find another bed.

The discipline was lenient. We have no justification for sustaining this claim.

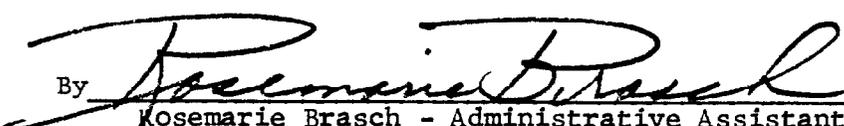
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.