

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employee:

1. That the National Railroad Passenger Corporation (AMTRAK) be ordered to clear Machinist Michael White's record of a deferred 60 day suspension.

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.

The Claimant, a machinist, has been employed by the Carrier for approximately six and one-half years and is assigned to the third shift. On August 15, 1980, Claimant is alleged to have been sleeping while on duty and charged by the Carrier with violation Rule of Conduct "L - Sleeping on Duty" and Rule of Conduct "K - Employees Must Attend to Their Duties During Prescribed Hours". An investigation was held on September 12, 1980. Claimant was notified thereafter that, as a result, a 60 day deferred suspension would be imposed.

The Organization argues the Carrier failed to establish by probative evidence its burden of proof that Claimant was sleeping on duty or failed to attend to his duties. The Organization asserts Claimant was on his unpaid lunch period. Claimant denied he was asleep and says it was customary for that shift to take lunch at times other than scheduled with the knowledge of the foreman and "when we are through working the train".

This Board finds the record established the Claimant was found in a darkened crew room, which also serves as a lunch room, in a prone position at approximately 3:50 A.M. His scheduled lunch break was from 3:00 A.M. to 3:30 A.M. Testimony of the two supervisors who discovered Claimant indicate he did not move when the lights were turned on. Despite disavowing being asleep, the Claimant at no point denied he was laying down.

We agree with the conclusion reached by the Carrier and concur that circumstances attested to by the supervisors reasonably allow a determination the Claimant was sleeping. While it is asserted the Claimant was on his lunch hour, the uncontested testimony of Carrier indicates lunches may be delayed only in the case of emergency. There is no evidence to establish that condition existed. Determining thusly, the Board agrees with the Carrier that Claimant was not attending to his duties during prescribed hours. We agree the evidence in the record substantially supports Carrier's charges and its decision to discipline.

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 2nd day of February, 1983.