

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Nathaniel Jones was unjustly dismissed from service of the Carrier following investigation held on February 28, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned Nathaniel Jones whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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 employees 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. Nathaniel Jones, entered service of the Carrier on October 22, 1979 and at the time of the incident in question worked as a laborer at Carrier's Beech Grove Facility, Beech Grove, Indiana. On February 26, 1980 Claimant received notice to appear for an investigation on February 28, 1980. He was charged with alleged violation of Carrier Rules of Conduct "K" and "L". These Rules read as follows:

"K. Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

"L. Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority."

On March 3, 1980 Claimant was notified that he had been found guilty as charged and was being dismissed from service on that day.

An analysis of the materials presented to this Board in the instant case warrants the conclusion that the Claimant did receive a fair and impartial investigation and that he is guilty as charged. Two witnesses testified that Mr. Jones was found sleeping on February 26, 1980 in lieu of covering his assignment. The only question to be resolved, therefore, is whether the sanction imposed by the Carrier in the instant case was appropriate.

This Board has underlined in numerous prior Awards that the role of discipline is not only punitive but that it should also provide corrective and training measures (Second Division 6485; Third Division 5372 and 19037 inter alia). An examination of the present record before this Board shows that, despite Claimant's short tenure with the Carrier, he does have a clean service file and no prior record of malfeasance of any kind: this does not, in itself, justify his unwise actions on February 26, 1980 when he violated Carrier Rules K and L, but this prior unblemished work record does provide mitigating circumstances whereby, under the rule of progressive discipline, the Claimant may be given an additional chance to prove himself. Therefore, this Board directs that Claimant be reinstated to service, but without back pay for time lost while out of service.

A W A R D

Claim sustained to the extent indicated in the Findings.

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 March, 1983.