

The Second Division consisted of the regular members and in addition Referee John B. LaRocco 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. Car Welder Albert Reed was unjustly assessed sixty (60) days suspension plus an additional thirty (30) days which had been previously deferred, on August 11, 1979.
2. Car Welder Albert Reed was erroneously charged with sleeping while on duty on July 23, 1979.
3. That the Chicago and North Western Transportation Company be ordered to make Car Welder Albert Reed whole and compensate him for all time lost dating from August 11, 1979, through November 9, 1979, plus 6% annual interest on all such wage loss, as per 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, a freight car welder, was suspended for sixty days for allegedly sleeping while on duty on July 23, 1979 at 1:50 p.m. As a result of this discipline, Claimant was also required to serve a previously deferred thirty day suspension.

At the investigation conducted on August 7, 1979, there were direct conflicts between the testimony offered by Claimant and the events as related by the Car Foreman. Claimant testified that he was assigned to cut the bay on a caboose, but he also had to burn inside the caboose since the Carrier had not provided a carpenter. When smoke and fumes pervaded the caboose, he had to sit down until the smoke dissipated. In addition, Claimant asserted he was wearing his safety glasses and his protective shield so it would have been impossible for his supervisor to ascertain whether or not his eyes were closed. The Car Foreman, on the other hand, emphasized that Claimant's assigned project (to cut the caboose bay) did not include any inside work. The Foreman observed Claimant, through the caboose windows and then from inside the caboose, sitting in a chair with his

head nodded back and with his eyes closed. The Foreman accused Claimant of sleeping, however, Claimant denies the accusation was made at that time. A few minutes later, the Car Foreman and Assistant Car Foreman saw Claimant seated in the same chair though he was not sleeping.

This Board cannot resolve the significant discrepancies between the Car Foreman's testimony and Claimant's assertions. The Carrier hearing officer could reasonably attach more weight to the Car Foreman's version of the July 23, 1979 incident than to Claimant's assertions. According to the Car Foreman, Claimant exhibited characteristics associated with sleeping. Claimant's contention that he sat down to wait for smoke to clear is implausible because he could have avoided the foul and smokey air simply by stepping outside the caboose. Therefore, we must conclude that there is substantial evidence in the record to prove that Claimant was sleeping while on duty.

During his short tenure with the Carrier, Claimant has compiled a lengthy disciplinary record. He has been repeatedly reprimanded and suspended for absenteeism and safety violations. Given his poor prior record, we must uphold the suspension assessed in this case.

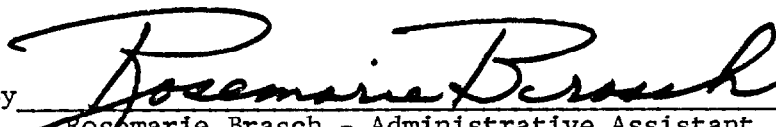
A W A R D

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 13th day of April, 1983.