

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: { International Brotherhood of Fireman and Oilers
{ The Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement Mr. R. C. Powell was unjustly dismissed from the service of The Washington Terminal Company effective October 27, 1980.
2. That accordingly The Washington Terminal Company be ordered to reinstate Mr. R. C. Powell to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired with compensation for all lost time plus 10% annual interest. Reimbursement for all losses sustained account of loss of coverage under health and welfare and life insurance agreements during the time he was 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 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 joined the Carrier's employe on January 23, 1980, as a Laborer. On August 22, 1980, he was absent from duty and was issued a one-day suspension. He was subsequently reprimanded for excessive loss of time during August, 1980, and was dismissed for allegedly sleeping during duty hours on August 31, 1980.

The Carrier's charges against the Claimant were transmitted in a letter of September 2, 1980, quoted in part below:

Violation of Washington Terminal Rule "N" which reads in pertinent part: "Participating in any unauthorized or unnecessary activity, while on duty or while on Company property, is prohibited." When on August 31, 1980, about 6:45 a.m. and again at 7:15 a.m., you were observed by supervision, sleeping in the shack at the Motor Pit.

The Organization argues that the Claimant did not receive a fair and impartial hearing within the meaning and intent of Rule 32, since the Carrier's designated hearing officer "acted more like a prosecuting attorney than a finder of fact."

It also asserts that the Carrier failed to meet its burden of proving the Claimant guilty as charged. For example, the Organization argues, employee Dempsey was with the Claimant during the time he was allegedly sleeping yet the Carrier did not call upon him to testify.

Furthermore, the Organization notes, the fact that the Claimant was sitting in a chair does not mean he neglected his duties or behaved in any way which was detrimental to the Carrier. And even if the Board finds the Claimant guilty, the Organization believes that in view of his past record dismissal is too severe.

The Carrier asserts that there is no question about the Claimant's sleeping on the job. Dispatch Foreman Hipolito found him stretched out in a chair with his hands folded across the front of him and his head down on his chest. He awakened him and instructed him to stay awake. Hipolito left and, when he returned in about a half-hour, again found the Claimant sleeping as before. The Carrier also notes that the Claimant admitted during the investigatory hearing that he "might have dozed off."

Moreover, the Carrier argues, if the Claimant believed employee Dempsey could have testified that he was not sleeping, the Claimant could have called him as a witness.

With respect to the Organization's allegation that the hearing was not fair and impartial, the Carrier notes that no such objection was raised during the hearing. And, the Carrier asserts, the Claimant was represented by his Local Chairman, was given full opportunity to testify in his own behalf, and could have called such witnesses as he deemed proper.

Finally, the Carrier notes that the Claimant was a short-term employee whose work record was blemished with incidents of tardiness and absence. His time card for the shift in question also reveals he was fifteen minutes late. Under these circumstances, the Carrier believes, discharge was an appropriate penalty.

The Board has concluded from a study of the record that the Carrier's discharge decision was appropriate. First, the record strongly supports the Carrier's conclusion that the Claimant was sleeping. According to the unrefuted testimony of Foreman Hipolito, the Claimant did not deny he had been sleeping when awakened on either of the two occasions. And the Carrier's position on the Claimant's credibility seems reasonable. If, as the Claimant maintains, he was talking to fellow employee Dempsey at 7:15 a.m. when Foreman Hipolito confronted him about sleeping, it seems curious that the Claimant did not ask Dempsey to verify this fact through testimony. And the Claimant's own testimony that he "might have dozed off" is also supportive of the Carrier's conclusion.

In response to the Organization's allegation that the investigatory hearing was unfair and partial the Board carefully reviewed the hearing transcript. Nothing therein is sufficient to convince the Board that the allegation has merit. Furthermore, the Board notes that no such allegation was made during the hearing itself.

Finally, the Board believes that under the circumstances of the case discharge was an appropriate penalty. The Claimant had been in the Carrier's employ for a mere ten months, during which time he had already been suspended for absenteeism. And sleeping while on duty has consistently been considered by this Board as a serious infraction, as reflected in Second Division Award 4629:

"... Sleeping while on duty is generally regarded as an offense which justifies discharge and, since the Claimant had only about three years of service with the Carrier, the penalty of discharge cannot be considered excessive."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 10th day of August, 1983.

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