

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(System Council No. 44 - AFL-CIO
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement, Service Attendant Roy Rivers, Jr., was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on December 12, 1980, after a formal investigation was held on November 12, 1980, in the office of Master Mechanic Renauld, Sibert Shops, Mobile, Alabama.
2. That accordingly Service Attendant Roy Rivers, Jr., be restored to his regular assignment at Sibert Shops, Mobile, Alabama, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital and life insurance and dental insurance be paid and compensated for all lost time effective December 12, 1980, and the payment of 6% interest rate added thereto.

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 employes 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 herein was a Service Attendant at the Carrier's Sibert Yard facility at Mobile, Alabama. On Friday, October 17, 1980 the Claimant was working the 3:00 p.m. to 11:00 p.m. shift and had been assigned along with another Service Attendant to clean up the area around #4 Shop Track; they were observed doing so prior to their scheduled lunch period which began at 7:00 p.m. Shortly after lunch break, the Claimant was not found in his assigned area. A search was commenced in the Shop area; an agent from the Carrier's Police Department was enlisted in the search, as well. Such effort eventually resulted in finding the Claimant purportedly asleep in a chair in a caboose. According to the Carrier, a flashlight beam was focused directly into his face for approximately five minutes before he opened his eyes and said, "Damn." This was reported

to have occurred at 8:55 p.m. The Claimant apparently disavowed being asleep, but merely sitting in the caboose. To the question as to how long he had been sitting there, the Claimant purportedly replied "since 7:30 P.M.". The Claimant also asserted that he had finished his work, that he was having some on-going problems with over-medication for nerves and that the other Service Attendant knew where to find him. (The other Service Attendant disavowed the claim that the work was completed or that he knew where to locate the Claimant.)

A hearing was conducted and, as a result and considering the Claimant's prior disciplinary record, he was dismissed from service. A grievance protesting the action was filed and advanced without resolution; it comes now on appeal to this Board.

The Organization contends the supervisor erred by failing to keep track of his employes, did not conduct a thorough search of the area before calling in a Special Agent and then used such individual to aid in firing the Claimant. It also contends that failure by the Carrier representatives to try to shake or awaken the Claimant shows error on its part and alleges intimidation of the Claimant. Per the Organization, the Claimant was under medication at the time.


The Board finds the Carrier's version of events is fully supported by the facts of this case and a valid basis for discipline. Termination for such infraction is not considered excessive and particularly where, as here, the Claimant's prior record is marked by the same offense as well as others.

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 7th day of March, 1984