

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

(International Brotherhood of Firemen and Oilers
(System Council No. 15 - AFL-CIO
Parties to Dispute: (
(Chicago and NorthWestern Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Hostler Helper R. G. Pridgeon, Marshalltown, Iowa, was unfairly dismissed from service of the Chicago NorthWestern Transportation Company, effective July 8, 1981.
2. That accordingly, the Carrier be ordered to make Mr. Pridgeon whole by restoring him 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 6% annual interest; with reimbursement for all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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 was employed as a Laborer and was serving as a Hostler's Helper at the Carrier's Diesel Shop in Marshalltown, Iowa. He had been so employed for approximately three (3) years.

The Carrier charges that on June 10, 1981, after coming on duty at 11 p.m. the previous night, he was discovered around 3 a.m. by the Assistant Diesel Shop Foreman lying on a seat with his eyes closed in a caboose, which was located one-half mile from the Diesel Shop. A second employee, a Hostler, was also observed in the caboose and the Carrier claims he was also sleeping.

The incident resulted in a formal investigation on July 7, 1981, in which the following charge was addressed:

"Your responsibility in connection with improperly performing your duties, namely, being observed in a reclining position with eyes closed inside Caboose No. CNW 11223 at approximately 3:05 a.m. on June 10, 1981 while you were employed as Laborer at Marshalltown Diesel Shop, Marshalltown, Iowa."

The Carrier contends that despite the fact that the Foreman "had shined his flashlight into the caboose," the Claimant did not see the light. In the Carrier's view, this indicates the Claimant was sleeping.

The Organization insists that when the Foreman entered the caboose, the Claimant and the Hostler were taking their coffee break. The Organization reports that on the evening in question they were unable to take their normal break at 1:00 a.m. and had postponed their break.

In support of this position, the Organization cites the testimony of the Foreman:

"Q. What time are they scheduled for break?

A. Coffee break is normally from 1:00 to 1:10 a.m. on the 3rd shift and lunch break is from 4:00 to 4:20.

Q. Now at any time did he, does the hostler and the helper, on their duty and, they work past their break, do you allow them to go whenever they can find time to go?

A. They take their break when we have sufficient time, yes, when we are busy.

The Claimant maintains he was awake when the Foreman entered the caboose. He testified:

"Q. On the night in question a Mr. Barnholtz did you hear him come onto the caboose.

A. Yes sir, I did.

Q. Did he bust right in then.

A. No he didn't he was kinda unusual because the door came open very slowly and I thought maybe a one of the yard crews there and a it was Jerry and I asked him what we had to do, and he said nothing and just a you know nothing to do and walked right on by me to the other end. He never shined his light or anything like that."

The entire record has been reviewed. The Organization contends the hearing was not conducted in a fair and unbiased manner. The exact cause of the several "inaudible" notations in the record are not fully explained. However, even with these omissions the record is sufficiently clear and comprehensive. In similar fashion, the Organization claims the hearing officer did not properly consider "the objections by the Claimant." An objective review of the hearing officer's rulings indicate while they may have been "heavy handed", the rulings were responsive and did permit the Claimant the opportunity to interrogate the Carrier's witnesses consistent with the charges before the investigation.

The record establishes that the Claimant was lying down in the caboose. He admits he was not feeling well at the time. Yet at the time he was so found, he had not clocked out. Lying down or in a reclining position with eyes closed or covered will be considered as sleeping in accordance with Rule 23. While the charge the Claimant was lying down has been established in the record, the same cannot be said in regard to the charge his eyes were closed and he was asleep. The assertion of the Claimant that he was on his coffee break, however, lacks merit, given the location of the unit.

The Claimant's discipline record was also examined to determine the appropriateness of the penalty. In three years of service he was issued discipline on six (6) occasions primarily for failure to protect his job. He also had several letters of reprimand concerning absenteeism.

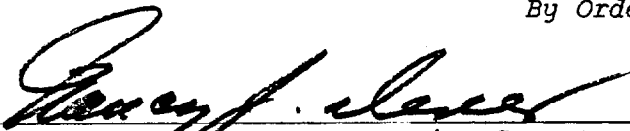
Since the original charge was not proven in all of its aspects, the Board hereby reverses the decision to dismiss and reinstates the Claimant with seniority rights unimpaired, but without any back pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1984