

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employes:

1. That, under the controlling Agreement, Sheet Metal Worker, Leon Sellers was unjustly suspended from service on August 23, 24, 25, 26 and 27, 1982 resulting from an investigation held on July 13, 1982.
2. That, accordingly, the Carrier be ordered to pay the Claimant all wages lost in the amount of forty (40) hours at the pro rata rate of pay as a result of the five working day suspension.
3. Remove all charges brought against Claimant from his personal 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, Leon Sellers, entered the service of the Carrier as a laborer at the Potomac Yard on December 3, 1970. He was promoted to pipefitter in 1976 and currently holds that position.

On June 23, 1982, Claimant was working as a pipefitter and was involved in an incident which led to his being charged as follows:

"You are charged with neglect of duty in that you were found asleep in the cab of B&O Locomotive 7610, located on No. 4 motor storage track in the Engine Terminal about 10:20 a.m., Wednesday, June 23, 1982."

The Organization argues that the evidence was too sketchy as to whether or not the Claimant was really asleep. The Organization points to testimony of some of the witnesses who admitted that they were unable to observe whether the Claimant's eyes were open or closed, and that they couldn't prove that Claimant was asleep.

The Organization contends that the Carrier violated Rule 34 of the controlling agreement. Rule 34 states:

"No employee will be disciplined by suspension or dismissal without a fair hearing by a designated officer of the Company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of these rules. At a reasonable time prior to the hearing, the employee shall be apprised of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses, without expense to the Company, and shall have the right to be represented by his duly authorized Representative.

... If the judgment be in his favor, he shall be compensated for the wage loss, if any, suffered by him."

Finally, the Organization states that the facts and evidence do not support the Carrier's discipline in that the Carrier's action was arbitrary and improper.

The Carrier argues that the facts developed in its investigation were sufficient to support Carrier's determination that Claimant was asleep. Moreover, Carrier points out that the facts developed in the investigation show that the Claimant had no reason to be in the particular locomotive that he was in and should not have been sitting on the floor out of sight. Finally, the Carrier argues that there was no evidence that the Claimant had complained of not feeling well until after he was caught in the compromising position.

This Board finds that Claimant was afforded a fair and impartial hearing at which he was represented by an Organization representative and his general chairman. At that investigation, both the Claimant and his representatives were permitted to introduce evidence and to cross-examine witnesses, all in strict accordance with the discipline rule of the applicable agreement.

This Board also finds that there was substantial and convincing evidence presented at the investigation proving the Claimant guilty of the serious offense with which he was charged. It is axiomatic that it is not the function of the Board to substitute its judgment for that of the Carrier's in disciplinary matters unless it can be shown that the Carrier abused its discretion by proceeding in an unfair, arbitrary, or capricious manner. This case does not present itself as one in which the rights of the Claimant were violated. The five-day suspension was fully warranted and there is no basis for the claim that Claimant's discipline should be overturned. An employe who sleeps on the job not only deprives the Carrier of the services for which it pays him, and has a right to expect, but it is also very unsafe and disruptive to the operation of a railroad. Sleeping while on duty is a serious offense. The Carrier must rightfully rely on employes, stationed throughout a large railroad yard, to vigilantly remain on duty during their shifts. Thus, the Carrier acted reasonably in suspending the Claimant; and we cannot disturb the Carrier's judgment in this case (see Awards 8529, 9184).

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Award No. 10057
Docket No. 10184
2-RF&P-SMW-'84

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 29th day of August 1984.