

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10062
Docket No. 10075
2-MP-MA-'84

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

Claim in behalf of Machinist Helper J. W. Tolbert at the pro rata rate of pay commencing when he was removed from service April 7, 1981 through May 21, 1981 on his regular assignment due to the Carrier's unequal application of their rules and regulations. This, in compliance with paragraph (b), Rule 24, of the controlling Agreement effective August 1, 1969, as amended.

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 entered the employ of Carrier as a Laborer on February 13, 1978. Claimant was employed as a machinist's helper at Carrier's Centennial Locomotive Shop at Fort Worth, Texas at the time the instant dispute arose. His hours of assignment were 11:30 p.m. to 7:30 a.m.

On March 16, 1981 Carrier notified Claimant that he was to be present on March 25, 1981, at the office of Master Mechanic, Diesel Shop, Fort Worth, Texas, for formal investigation on the charge that Claimant was observed sleeping while on duty on March 16, 1981 at approximately 7:10 a.m. After formal investigation and hearing, postponed to April 1, 1981, Claimant was given a forty-five (45) day suspension.

The Organization maintains that Carrier failed to prove the charges against the Claimant. Specifically, it contends that Diesel Foreman Jordan's testimony concerning the events that morning is not credible in view of the personal animosity that exists between Jordan and Claimant. Moreover, the Organization argues that Foreman Jordan was found sleeping on duty several days subsequent to the events in question, and was not reprimanded. Finally, the Organization takes the position that suspension is not justified because Claimant had finished his assigned duties and was awaiting the arrival of additional units at the time he was sleeping.

The Carrier asserts that substantial evidence, including Claimant's own admission, was adduced at a fair and impartial investigation which conclusively proved that Claimant was sleeping while on duty, as charged. Additionally, the Carrier maintains that under all the facts and circumstances of this matter, including the Claimant's prior disciplinary record, the forty-five (45) day suspension was clearly justified.

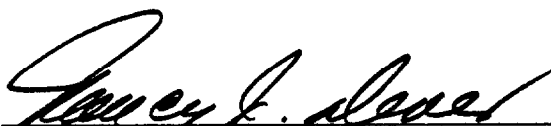
The Board has reviewed the record in this case carefully. The evidence demonstrates that the Carrier met its burden of proof as to its charge against Claimant with substantial probative evidence. The discipline imposed was not arbitrary or excessive. Claim denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leaver - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.