

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Soo Line Railroad Co. violated Rules 4, 31 and 32 of the Shops Craft Agreement as amended, when carmen Robert Sherck (sic) and Allen Tompsett, N. Fond du Lac, Wi. were unjustly suspended from service, due to investigation held September 3, 1982 to develop facts and place responsibility regarding the failure to provide blue flags protection with locked switches, while inspecting and air testing trains, making initial terminal air brake test on outbound trains, in a prone position in the carmen's shanty in the transportation yard, with the lights out and failure to wear a hard hat on your tour of duty.

That accordingly, the Soo Line R.R. Company be ordered to compensate carman R. Scherck for lost (sic) of compensation of 11 work days and carman A. Tompsett for lost (sic) of compensation of 10 work days when they were assessed a letter of discipline for 15 days. Due to Soo Line R.R. Co. violation of Rule 31 and 32 and failure to show burden of proof of charges, which are claimed not to be precise.

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.

August 26, 1982 Claimant Scherck was a Carman Inspector and Claimant Tompsett a Lead Carman working the 12 midnight to 8:00 a.m. shift at the Soo Line Railroad Company's Fond du Lac, Wisconsin Transportation Yard.

The Manager/Shops testified that he looked in and found Scherck in a dark Carman shanty lying on a passenger car seat in a prone position at 4:30 a.m. with eyes closed and without glasses or hard hat. He shined his light on Tompsett who, he said, was stretched out in a chair, cap over his eyes and feet on a desk. The Manager made unsuccessful attempts to open the shanty door by bumping his hip against it. Scherck then got up and opened the door after "four or five raps with my hip", the Manager testified.

Both men denied they were sleeping but did not give any credible explanation of their conduct. They stated they were on lunch break -- a contention contradicted by Scherck's worksheet. Scherck's worksheet shows lunch from 4:40 to 5:00 a.m. and there is no evidence that the two Claimants were eating lunch. Tompsett explained that the light had been off in the shanty so he could better see what was going on outside. He recounted that once he had received a letter to conserve electricity. Scherck and Tompsett were each suspended for fifteen days.

Prior to the Hearing Claimants requested train sheets for the date and time period in question, a Lead Man's worksheet for the previous two months and gas reimbursement slips for the previous two months. This information was not furnished.

The Notice of Investigation was directed to four employees identifying several charges only some of which applied to Claimants Scherck and Tompsett. There was no identification of any specific Rule violated.

Based upon the circumstances and the Manager/Shops testimony, the Board finds sufficient evidence to support the determination that both men were sleeping.

There are a number of prior Awards holding, as we do here, that the investigation proceedings are not defective despite the failure to identify a specific Rule violation, when the Notice, as in this case, adequately informs the employees of the charge. (Third Division Award 24295; Second Division Awards 7936, 8194, 4199). Here the Notice identified the date of the alleged infraction and the complained-of misconduct. The phrasing gave Tompsett and Scherck notice of the conduct they were to defend, although it cited other acts (failure to apply blue flag protection, etc.) that applied to other employees. The record does not indicate that either were prejudiced in their presentation by the Notice or the fact that the Hearing involved other employees. The failure to furnish the requested information does not have any impact upon the discipline for sleeping.

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 13th day of March 1985.