

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Laborer D. Harmon, I. D. No. 166438, was unjustly dismissed from service of the Seaboard System Railroad on May 31, 1983, after a formal investigation was held on April 28, 1983, in the office of Mr. J. C. Davis, Shop Superintendent.
2. That accordingly, Laborer D. Harmon be restored to his assignment at Waycross Shops, Waycross, Georgia, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid and compensated for all lost time effective May 31, 1983, for each and everyday Mr. Harmon is not permitted to protect his assignment at the pro-rata rate of pay, and the payment of 10% interest rate be 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.

Laborer D. Harmon was dismissed from the service of the Seaboard System Railroad May 31, 1983 after having been found by his Supervisor allegedly sleeping at 6:12 a.m., April 24, 1983.

Claimant's shift did not end until 8:00 a.m. that morning. While he had cleaning duties in the locker room from time to time during the shift, he explained that he had gone to the locker room in order to eat lunch although he conceded that he did not normally eat lunch in the locker room.

At 6:00 a.m. Harmon told his Foreman that he had completed an assignment of fueling locomotives. He was told to leave the locker room and check the locomotives since they were to be pulled out in ten minutes. The Supervisor later checked the locomotives and found that they had not been fueled and, upon returning to the locker room, found Claimant sitting in front of a locker, head back against the wall asleep. The Foreman, together with the Assistant Department Foreman, carried on a conversation in a normal tone of voice for three or four minutes, then attempted to arouse Claimant by calling his name. It was not until the third call that he awoke and responded. When asked whether he had fueled the locomotives he assured the Foremen that they were ready to go. The two men, along with Claimant, proceeded to look at the locomotives and found that they had not been fueled.

Claimant explained his leaning back position in the locker room on the basis that he had been "cramping" and that the position he was sitting in had been recommended to him by a Doctor. He also indicated that he had difficulty hearing as a result of working around engines.

Claimant's termination was based upon the alleged violation of Rules 4 and 26 of the Mechanical Department of the Seaboard Coast Line Railroad Company. Rule 4 requires employees to devote their time exclusively to the business of the Company unless expressly exempted from doing so by proper authority and Rule 26 specifies that employees must not absent themselves from their duties without permission from the proper authority.

Claimant had been suspended for five days in October, 1980 when found sleeping in a locker room.

The Board notes the conflict in the Claimant's explanation of why he was in the locker room at 6:12 and finds that there is sufficient evidence to establish that, not only was Claimant asleep, but that he had duties to perform which he neglected.


We note the prior suspension for sleeping in violation of the same Rule. Based upon the entire record, the Board concludes that the discipline of dismissal in this case was supported by the evidence and not excessive.

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.