

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

Dispute: Claim of Employees:

1. The Carrier violated the controlling agreement when they improperly suspended Carman R. E. Moore, Jr. from service and subsequently assessed him with a sixty (60) day suspension as a result of an investigation held on September 4, 1979.
2. That accordingly, the Carrier be ordered to reinstate the claimant to service with all seniority rights, vacation rights, health and welfare benefits and all other privileges that are conditions of employment unimpaired as well as compensation for all lost wages plus 6% per annum due to the Carrier's action.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Carrier urges the Board to dismiss this claim since it was "amended" in being processed to the Board. The amendment concerned the Organization's request for interest as part of a remedy. The Board finds that to be insubstantial to set aside the claim.

Claimant was subject to an investigative hearing under the charge of "being found apparently asleep in your personal vehicle while on duty at Rocky Mount, N.C., at approximately 2:30 a.m., August 13, 1979." The hearing was conducted in a fair and proper manner. The record shows testimony, by two Carrier Supervisors and a Carman directed to the scene, to the effect that the Claimant was asleep in a prone position in his vehicle. Despite the Claimant's denial, the Carrier concluded that the Claimant was asleep, and the Board has no basis to conclude otherwise.

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Sleeping while on duty is well established as a serious offense. The resulting penalty of 60 days' suspension was not excessive, particularly in view of the fact that the period of suspension included time out of service from the offense to the hearing.

The Claimant is a Local Chairman, and the Organization argues that the penalty was in violation of Rule 33 which forbids "discrimination against any employees...who represent other employees". In view of the proven offense, the Board finds no basis for a claim of discrimination.

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 17th day of July 1985.