

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

- "1. That Machinist C. L. Wilson, Employee number 079793 was dismissed from the service of the Consolidated Rail Corporation on February 9, 1983.
2. That, accordingly, Machinist C. L. Wilson's record be cleared and he be compensated for each and every day he is dismissed."

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 were given due notice of hearing thereon.

The Claimant was employed by the Carrier at its Bay View Yard, in Baltimore, Maryland. He had been in the service of the Carrier for approximately nine (9) years. Following a trial that was held on January 7, 1983, the Claimant was dismissed from service for being "in a reclining position with black leather jacket" over his "lower body" and his "eyes closed" in a "truck which had its motor running".

After carefully examining the record, the Board concludes that the Claimant was found asleep lying across the front seat of a Company truck while on duty at about 6:40 a.m. on January 7, 1983. That the Claimant was asleep cannot be disputed in light of the note from the Claimant's physician, Dr. Johnson, who "evaluated" the Claimant on the day of the episode. In his note dated January 18, 1983, which by necessity must be based upon information provided by the Claimant, Dr. Johnson indicates that the Claimant "fell asleep".

The Organization contends that the Claimant became sick from the gasoline fumes leaking into the cab of the truck, and as a result, he "passed out". When the Claimant was awakened by Supervisor Bosley in the presence of General Foreman Kowal, he did not disclose that he was ill. Pursuant to General Foreman's instructions, Laborer Potenziano had looked into the truck and observed the Claimant "across the seats in a reclining position". When asked by the Claimant what kind of condition he was in and whether he appeared sick, Laborer Potenziano replied: "You didn't say anything to me, as the night went on. I couldn't tell if you were sick or not." Besides his failure to disclose immediately that he was ill when he was awakened, the Claimant did not notify supervision of his illness prior to being discovered in the truck; nor did he inform supervision of any defects in the truck until after the episode in question.

Furthermore, Dr. Johnson's note does not constitute probative evidence that the Claimant was overcome by gasoline fumes entering the cab of the truck. The references in Dr. Johnson's note as to what occurred on January 7, 1983 were based solely on statements furnished by the Claimant. In contrast to the "situation" that was "described" by the Claimant, Dr. Johnson's medical evaluation of the Claimant is entitled to great weight. In this connection Dr. Johnson found "no clinical evidence of carbon monoxide * * present." It should be underscored that Dr. Johnson's evaluation of the Claimant took place on the same day as the episode in question. After carefully examining the record, the Board cannot conclude that the Claimant fell asleep in the cab of the Carrier's truck because of gasoline fumes.

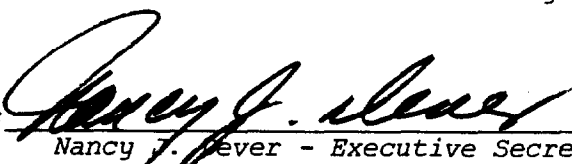
The Board is persuaded that the Carrier's decision of dismissal from service should not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois this 11th day of September 1985.