

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

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Electrician M. J. Williams 30 days, effected by notice dated January 28, 1983.
2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician M. J. Williams to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in aforementioned period in order to make him whole; and expunge his record.

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.

Claimant, Electrician M. J. Williams, received a thirty-day suspension from the Carrier after being found guilty at a hearing in connection with the following charge:

Assuming the position of sleep in the locker room at Enola Loco. Terminal, Enola, Pennsylvania, on December 19, 1982, at 17:38 p.m., violation of Safety Rule 4012(a).

The above charge was based upon the report of General Foreman Fissel, who stated that he observed the Claimant for five minutes in a chair in the middle of the aisle leading to the Supervisor's locker room with his head back and his eyes closed.

The Organization's position is that the Claimant was not sleeping, but that he was resting his eyes for a few minutes to gain relief from a sinus infection.

The Organization further argues that the Carrier's evidence is merely speculative and does not support the charges against the Claimant.

Finally, the Organization contends that the hearing was not fair and impartial because the Carrier used the Claimant's prior discipline record at the trial, and that prior discipline record was the main basis for the discipline imposed.

The Carrier contends that the record contains substantial credible evidence of the Claimant's guilt of the offense charged. The Carrier further argues that the trial was fair and impartial and that no change in the discipline is warranted in view of the seriousness of the proven offense and the Claimant's prior discipline record. The Carrier submits numerous awards which state that an employee who sleeps while on duty or who assumes a position of sleep while on duty commits a serious offense warranting discipline as severe as outright discharge.

Finally, the Carrier argues that the Claimant has not presented any evidence that he was ill and that his illness was the reason that he had his eyes closed on the day in question.

After reviewing the record in this case, this Board finds that there was substantial evidence supporting the Carrier's determination that the Claimant was guilty of the offense charged. The Claimant was charged with assuming the position of sleep, and there was substantial evidence to support that charge.

Numerous awards have held that an employee who sleeps while on duty or who assumes an attitude of sleep while on duty commits a serious offense warranting discipline or discharge. (See Second Division Award 8537, and Public Law Board 550, Award 103.)

While the Claimant denied being asleep, he did not deny assuming an attitude of sleep by having his eyes closed in a sitting position. Consequently, the Carrier's case stands un rebutted, and this Board finds that the Carrier was justified in finding the Claimant guilty as charged.

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The previous disciplinary record of the Claimant shows that he has been suspended on two previous occasions, once for ten days for a related offense. Consequently, this Board finds no reason to set aside the discipline imposed by the Carrier.

Finally, this Board finds that the hearing was fair and impartial, and the Claimant was extended all of his rights.

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 9th day of October 1985.