

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

(International Association of Machinists and Aerospace  
Workers)

Parties to Dispute: (

(Seaboard System Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard System Railroad (formerly Seaboard Coast Line Railroad) violated the applicable January 1, 1968 Agreement, particularly Rule 32 but not limited thereto between the Carrier and the IAM&AW when it unjustly suspended Machinist R. E. Johnson from service for 45 days to begin August 25, 1982 and end October 8, 1982, account allegedly being asleep on duty, excessively tardy in reporting for work and absence from his assignment without proper authority.

2. That, accordingly, Carrier be ordered to compensate Machinist Johnson for all wages lost at the Machinist pro rata rate as a result of his suspension from the service, make Claimant whole for any other pay or benefits lost and clear his service record of all references to the instant dispute.

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.

Claimant, Machinist R. E. Johnson, is employed by the Carrier, Seaboard System Railroad, at its Uceta Enginehouse facility in Tampa, Florida.

On August 17, 1982, a formal investigation was conducted on the charges that the Claimant was found asleep on duty on July 26, 1982, that he was tardy habitually in reporting for work, and that he was absent from his assignment without permission, also on July 26, 1982. As a result, the Claimant received a 45-day suspension from August 25, 1982, to October 8, 1982. The Organization thereafter filed a Claim on the Claimant's behalf.

The Organization claims that the Carrier violated Rule 32 of the controlling Agreement when it imposed the suspension on the Claimant. Rule 32 provides, in part:

*"No employee shall be disciplined without a fair hearing by a designated officer of the Company. . . . At a reasonable time prior to the hearing such employee and the local chairman will be appraised in writing of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and be represented by the duly authorized representative. . . ."*

The Organization specifically contends that the Claimant did not receive a fair and impartial hearing. The Carrier did not prove the charges against the Claimant, but instead found him guilty of Rule violations that were not listed in the Notice of Investigation.

The Organization also argues that the Notice of Investigation contains a tardiness charge that is unrelated to the incident of July 26, 1982, another Rule 32 violation. There is no indication in the notice of the incident that triggered the tardiness charge. The Organization argues that the tardiness charge is an attempt to circumvent Rule 32 and enter irrelevant material into the record. The Carrier neither charged nor proved that the Claimant violated the Agreement's rules governing absenteeism or tardiness.

The Organization finally contends that the officer who conducted the hearing was predisposed against the Claimant, and that the Carrier failed to prove the charges against the Claimant. The Organization therefore contends that the Claim should be allowed in its entirety; the Claimant's service record should be cleared of all references to this dispute; he should be compensated for all wages lost due to the suspension; and he should be made whole for all other lost pay and benefits.

The Carrier contends that the facts clearly establish that the Claimant was guilty of the charges set out in the Notice of Investigation. The evidence and testimony establish that the Claimant was seated in a chair with his eyes closed in the restroom; the Claimant admitted this. The Carrier maintains that although the Claimant did not admit that he was asleep, the facts leave no doubt that he was asleep.

The Carrier also argues that a review of the Claimant's time records further establishes that the Claimant was excessively tardy from August 1979 through July 1982; the Claimant did not dispute the accuracy of the time records.

The Carrier further points out that Rule 32 requires that employees must be notified in writing of the precise charges against them; it does not require that an employee must be charged with a specific Rule violation. Consequently, the Carrier argues, the Claimant was properly notified of the charges against him.

The Carrier additionally contends that the investigation was conducted fairly and impartially. The Claimant had sufficient opportunity to introduce and examine all of the record evidence, and present his own witnesses and evidence.

The Carrier asserts that it proved the Claimant was guilty as charged and the discipline imposed was lenient under the circumstances. Discipline is within managerial discretion and can be challenged only on the grounds that it is arbitrary, capricious, excessive, or an abuse of managerial discretion. The discipline in this case was neither arbitrary nor capricious and was justified by the seriousness of the offense. For these reasons, the Carrier contends that the Claim is without merit and should be denied in its entirety.

This Board has reviewed all of the evidence and testimony in this case, and it finds that there is sufficient evidence in the record to support the Carrier's contention that the Claimant was sleeping on duty on July 26, 1982, and not performing his assigned duties. In addition to the Supervisors who observed the Claimant sleeping and the photograph of the Claimant sleeping, the Claimant admitted at the hearing to having his eyes closed on duty while in a reclining position. Moreover, the Claimant stated that he did not notice that his foreman had observed him asleep and stated that he had not informed his superior that he felt ill on that day. Finally, the Claimant also admitted to not performing his assigned duties on that day. Hence, this Board finds that there is ample evidence in the record to support the Carrier's finding that the Claimant was guilty of serious Rule violations.

Moreover, there is also sufficient evidence in the record that the Claimant was excessively tardy, having reported late for work on 156 days between August 15, 1979, and July 31, 1982. Hence, there was sufficient evidence in the record to support the additional Rule violation on the part of the Claimant.

This Board has reviewed the hearing and hereby rejects all of the procedural arguments raised by the Organization and finds that the Claimant was adequately apprised of the charges against him and that the hearing was fair and impartial.

Since there was sufficient evidence of wrongdoing on the part of the Claimant to justify discipline, this Board now turns its attention to the 45-day suspension imposed on the Claimant by the Carrier. It is fundamental that this Board will not second-guess a Carrier's judgment in the imposition of discipline unless it is found to be unreasonable, arbitrary, or capricious. (See Second Division Awards 7347 and 7325). Numerous decisions have held that sleeping while on duty is the type of offense that can justify discharge. (See Second Division Awards 9260, and 8712). Moreover, employees have been terminated for serious attendance violations.

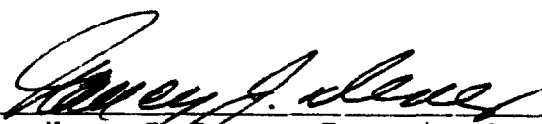
Hence, this Board finds that the 45-day suspension issued to the Claimant by the Carrier for the serious Rule violations of which he was found guilty was not excessive, and this Board will not set it aside.

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 11th day of December 1985.