

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Baltimore & Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated Claimant, D. L. Bishop's contractual rights, when they subjected him to an unfair and partial hearing on the date of December 23, 1982, disciplined Carman Bishop without cause, to the extreme extent of thirty (30) calendar day's suspension, both the hearing and discipline inflicted upon Claimant without justification or provocation, causing Claimant to be so injured to the extent as claimed.

2. That accordingly, Claimant be compensated for all wages lost, inclusive of benefits, account subjected to such arbitrary discipline (as above) that he be made completely whole, benefits, etc., as though he were never subjected to such unwarranted discipline."

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.

The Claimant, D. L. Bishop, a Carman at the Carrier's Cumberland, Maryland shops was given a thirty calendar day suspension as a result of an investigation held on December 23, 1982. The Claimant was charged with sleeping while on duty at approximately 3:15 A.M.. on November 12, 1982.

The Organization argued the Claimant was subjected to an unfair investigation because testimony was based on assumptions. In addition the Organization argued that, while the Claimant was in fact in the middle trailer at the time and date in question, he was not asleep. The Claimant was eating his lunch at the time and had a headache and was trying to cure his condition. The Organization also notes the Claimant was contacted by radio at 3:10 A.M.; and he was merely waiting for his co-worker in order to complete his assignment, and that, while waiting, he merely laid back on the bench. Finally, the Organization states the Carrier officials who found the Claimant testified that he was just sitting there. They could not see the Claimant's face; they could only see his feet.

The Carrier argued the hearing was conducted in a fair and impartial manner. The Carrier stated the Claimant was guilty as charged. The position of the Claimant on the night in question was such as to indicate very strongly that he was sleeping on the job. The room was darkened, he was in a reclining position, and the Claimant had no credible excuse for being found in that position. The Carrier notes that in many cases the Board is reluctant to overturn the Carrier's conclusions of fact and that, in any case, this transcript contains substantial evidence to support the Carrier's action. The Carrier argued that the discipline assessed was actually very lenient in light of many cases that have held that sleeping on duty is a serious offense which would justify dismissal. Finally, the Carrier argued that claim for benefits other than actual wage loss is excessive pursuant to Rule 32 of the Agreement.

Upon complete review of the evidence presented, the Board finds the Hearing conducted by the Carrier was indeed, fair and impartial. With respect to the merits of the case, the Claimant is charged with a serious offense, an offense which, if proven, would merit a serious penalty. As has been noted in many of these cases, the burden of proof in a disciplinary matter falls upon the Carrier. The Board finds that the Carrier has not sustained its burden. Cases involving sleeping on the job can generally only be proven by circumstantial evidence. In this case the observations by the Carrier officials were not sufficient for a showing of sleeping on the job, not to mention the fact that the Claimant was contacted by radio only five minutes before the incident; and his reasons for being in the area were plausible under the circumstances. The Board will order the Employee made whole for any wage loss including holidays, if any, which occurred during this time. The Claim for benefits is not allowed.

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Award No. 10698
Docket No. 10643
2-B&O-CM-'85

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.