

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11681
Docket No. 11340
89-2-86-2-151

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Association of Machinists and
(and Aerospace Workers
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (Seaboard System Railroad)

STATEMENT OF CLAIM:

1. That CSX Transportation, Inc. violated Rule 30, but not limited thereto, of the current agreement when it unjustly suspended Machinist Apprentice Thornell Dumas for 25 working days following an investigation held on July 18, 1985.

2. That accordingly, CSX Transportation Inc. be ordered to compensate Mr. Dumas for all pay and benefits lost (made whole) as a result of said suspension and remove all reference to the charges from 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 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 is a Machinist Apprentice at the Carrier's Hamlet Diesel Shop in Hamlet, North Carolina. On May 10, 1985, he was assigned to work the first shift, at 3:15 P.M., toward the end of his shift, a Foreman allegedly discovered the Claimant sitting in the locomotive cab in a slouched position with his eyes closed. This Foreman alerted the Assistant General Foreman and another Foreman, and all three entered the cab. According to them, the Claimant was still slouched in the seat, but with his eyes open. He did not reply to a question asked to him by the Assistant General Foreman, and did not move until he actually directed him to do so.

As a result of this incident, the Claimant was charged with being found in the cab of Locomotive 4724 in a slouched position with his eyes closed while on duty at 3:15 P.M. on May 10, 1985, in violation of the portion of Rule 3 of the Rules and Regulations of the Mechanical Department (Form 7852 SBD) which forbids, "Sleeping on duty or lying down or in a slouched position with eyes covered, concealed, or closed." The Claimant was found guilty of the charge at an Investigatory Hearing on July 18, 1985, and was given a 25 working days suspension.

The Claimant acknowledged in testimony at the Investigatory Hearing that he was not only suffering from family problems at the time of the incident, but was also "cross-addicted" to alcohol and marijuana. He has since entered the Carrier's rehabilitation program and remains an active participant in that program at the present time. According to the Claimant, he was not slouched in the seat that day, nor were his eyes closed for the length of time specified. He admitted that he was "deep in thought," but asserted that he was unaware of having violated Rule 3.

The Foreman, first to discover the Claimant, testified that when he looked through the cab's window at the Claimant for approximately 15 seconds, the Claimant was sitting in a slouched position with his eyes closed and his head to the side. The Assistant General Foreman, who viewed the Claimant approximately 5 minutes later with another Foreman, described him as sitting in a slouched position with his legs fully extended and his eyes open. This Foreman, who saw the Claimant from the back, could not see his eyes, but asserted that he was indeed seated in a slouched position. All three Supervisors agreed that the Claimant did not respond to a question put to him by the Assistant General Foreman, and that he made no effort to get up from his slouched position when the three men entered the cab.

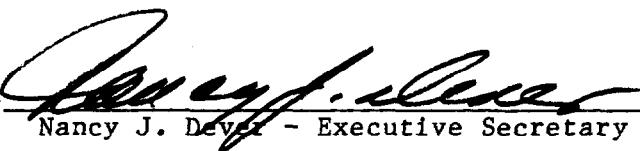
In the evidence presented before this Board, there is insufficient corroboration of the charge that the Claimant was "sleeping on duty, or lying down with eyes closed." The testimony of the Supervisors indicates that the Claimant was not "alert" and was "slouched" in his seat, and the Claimant's own testimony appears to uphold these assertions. However, the evidence does not conclusively indicate that the Claimant was in violation of said portion of Rule 3 in regard to being asleep or having his eyes closed. And, although the Claimant had received a 20 day suspension in May, 1984, for sleeping on duty, it cannot be automatically assumed that he was doing so again--it must be conclusively demonstrated. The Board, therefore, upholds the Claim and orders that the Claimant be compensated for all wages lost during the suspension period and that any reference to this charge be expunged from his record.

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 22nd day of March 1989.