

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician Y. I. Badir was unjustly treated when he was assessed a five (5) day suspension from service on March 29, 1987, following investigation for alleged violation of portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician Y. I. Badir to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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 was charged with sleeping on duty April 8, 1986, in violation of Rule 810 which forbids employees from sleeping on duty, lying down or assuming a reclining position with eyes closed or eyes covered or concealed. A hearing was initially scheduled for May 28, 1986. The hearing was postponed at the request of the Claimant and his representatives due to his medical condition sustained from an on-duty injury which allegedly occurred on April 11, 1986. The hearing was rescheduled and held on February 13, 1987, and as a result of said investigation and hearing, the Claimant was issued a five (5) day suspension on May 29, 1987. The Claimant was dismissed from service for falsification of an accident report in order to establish the basis for an FELA claim. This dismissal was upheld in Public Law Board No. 4457.

The Organization charges the Carrier with delay in citing the Claimant for violation of Rule 810, sleeping during working hours. The Organization charges that the Carrier cited the Claimant for sleeping as a reprimand for reporting an on-the-job injury. Furthermore, the Organization characterizes the testimony of the Carrier's witnesses as conflicting. To wit: One witness testified that the Claimant was sitting down then characterized the Claimant as being stretched out followed by characterizing the Claimant as being reclined. Another witness testified the Claimant's feet were stretched out, he also testified that he could only see the Claimant from the chest up. One witness testified that the window to the cab was open, while another witness testified that the window to the cab was closed. The Organization relies on this testimony as the basis for its claim that the discipline of the Claimant was based on fabrication. It is the position of the Organization and the Claimant that the Claimant was sitting in the cab waiting for his partner as instructed by his supervisor.

The Carrier claims that the evidence of its witnesses regarding the incident of May 8, 1986, is consistent with the statements those witnesses gave immediately after finding the Claimant asleep. The Carrier also claims that there was no denial of due process to the Claimant in that the hearing which was originally scheduled was postponed indefinitely at the request of the Claimant due to an injury that he allegedly suffered on the job. The Carrier also relies on the fact that the Claimant had been found asleep while on the job on several other occasions. The Carrier rejects the Claimant's and the Organization's claim that the Claimant was cited for violation of Rule 810 because he reported an alleged injury on the job. The Carrier states that its delay in issuing the charge letter was brought about by the workload of the Carrier's officers and nothing else.

The Board rejects the Organization's claim that the only reason the Carrier cited the Claimant for violation of Rule 810 on May 8, 1986, for an incident that occurred on April 8, 1986 was because the Claimant filed a report for an on-the-job injury on April 11, 1986. Other than the coincidence of dates, the Organization offered no other evidence in support of this accusation. The Organization's position is further undermined by the fact that the Carrier's three (3) witnesses wrote and signed statements to the effect that the Claimant was asleep on April 8, 1986, on that very day. Furthermore, other than the conflict in testimony on the part of the Carrier's witnesses that the window to the cab was open or closed, the Board finds that the other alleged conflicts cited by the Organization merely have to do with terminology and not fact. Finally, the delay in issuing the charges against the Claimant did not in any way deprive the Claimant of his Agreement due process rights. Also, the hearing was delayed until February, 1987, at the request of the Claimant. For these reasons, the Claim is denied.

Form 1
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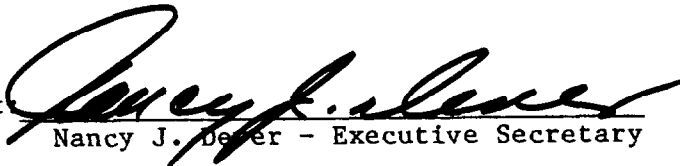
Award No. 11731
Docket No. 11578
89-2-88-2-60

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 14th day of June 1989.