

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
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. Under the current agreement Electrician Dennis Anderson, Locomotive Department, Duluth Missabe & Iron Range Railway Company was unjustly suspended from Carrier service beginning and including May 4, 1987 through and including May 23, 1987.

2. Therefore, accordingly Electrician Dennis Anderson be made whole, restored to Carrier's service with seniority rights, holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus ten percent (10%) annual interest on all such lost wages, also reimbursement for all losses sustained on account of loss of coverage under health and welfare and life insurance agreements during the time held out of service, and that all charges, correspondence and transcripts regarding this alleged incident be removed from Electrician Dennis Anderson's personnel file.

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.

On March 26, 1987, the Claimant was given notice of an Investigation for an alleged incident that occurred on March 25, 1987. The charge letter states:

"Charges brought against you are General Rule Number 8, DM&IR Rules of the Locomotive Department and other rules concerning lack of productivity, and sleeping during work hours, and/or other violations which may be discovered during the above mentioned formal investigation."

On April 9, 1987, a formal Investigation was held and the Claimant was issued a 20 calendar day Notice of Suspension dated April 24, 1987.

The Organization claims that the Claimant was unjustly disciplined in violation of the Current Agreement, in particular, but not limited to Rule 28 which requires that the charges be specific. The Organization further claims the Carrier did not meet its burden of proof and that Carrier used the Claimant as an example because he is a union officer.

The Carrier alleges that after trying to locate the Claimant by loud speaker several times, the Supervisor found the Claimant sleeping in a cab of a locomotive in violation of General Rule 8 which reads:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the company's service while on duty. They must not absent themselves from duty, exchange duties with, or substitute others in their place without proper authority."

The Carrier further argues that the Claimant was afforded due process and that substantial evidence supported the charge of sleeping.

In reviewing the charges against the Claimant, the Board notes that while they may appear to be open-ended, the specific charge of sleeping was the only one on which evidence was presented. Further, based on the entire record, the Claimant was prepared to answer those charges.

The Board acknowledges that it is well established that the reconciliation of directly contradictory testimony and the establishment of witnesses credibility is properly the function of the Hearing Officer and not the Board who reviews the appeals. A Hearing Officer's decision will remain undisturbed provided the evidence and the testimony that he credits and relies upon is substantial. A review of the evidence in the instant case relied upon by the Hearing Officer is clearly not substantial. The uncorroborated, contradictory and less than certain testimony of the Carrier's only witness does not establish that the Claimant was asleep as charged.

Further, there is nothing in the record to indicate that the Claimant has a propensity to sleep on the job or engage in other rule violations.

Based on the foregoing, the Board will award the Claimant will be made whole for all lost wages and benefits incurred during the 20 calendar day suspension.

A W A R D

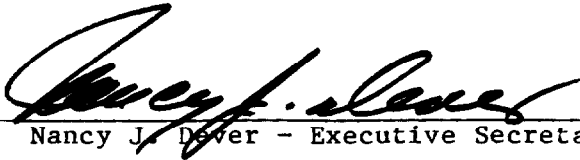
Claim sustained in accordance with the Findings.

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Award No. 11775
Docket No. 11565
89-2-88-2-79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of October 1989.