

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12503
Docket No. 12454
93-2-91-2-292

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish 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 D. M. Carmassi was unjustly treated when he was assessed a ten (10) day suspension from service commencing on November 5, 1990, 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 compensate Electrician D. M. Carmassi for the ten (10) days he was suspended, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and with the loss of wages to include interest at the rate of ten percent (10%) per annum.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 October 3, 1990, Claimant was employed as an Electrician at the Carrier's Roseville, California locomotive plant and had 27 years of seniority. On that date, the Claimant was reportedly observed sleeping in a reclining position on a locomotive by the Carrier's Sacramento Division Superintendent.

By letter dated October 9, 1990, the Carrier notified Claimant to be present on October 17, 1990, for a formal hearing to develop facts and place responsibility, if any, for a possible violation of Rule 810, which reads in part: "Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping."

At the Organization's request, the Hearing was postponed until October 31, 1990. By letter of November 6, 1990, the Carrier assessed a ten-day suspension on the Claimant, to begin Saturday, November 10, 1990.

The Carrier maintains that it adduced sufficient evidence at the Investigation to show that the Claimant was sleeping on duty, which is a violation of Rule 810 and one that normally calls for dismissal. The Carrier states that it was only because the Claimant had had no previous discipline assessed on his record that it reduced the discipline to a ten-day suspension. The Carrier also points out that the Organization did not present any new evidence in support of the Claimant at the parties' September 5, 1991, conference on this appeal and therefore affirms its original decision to suspend the Claimant.

The Organization contends that the ten-day suspension is excessive, given that the Claimant was experiencing family difficulties at the time of the incident that gave rise to the suspension and that the Superintendent had given the Claimant his word on October 3, 1990, that he would not reveal the sleeping incident to anyone else. (The Organization introduced a letter from the Claimant's doctor at the hearing to the effect that the Claimant had been taking medication for headaches for approximately four years and that he was not supposed to take this medication while at work and that also alluded to the Claimant's being under a great deal of stress for the six months prior to the October 3, 1990, incident due to family problems.) The Organization suggests that a letter of warning or a memo in his personal file would be a more appropriate discipline for a 27-year veteran with the Carrier.

The Board has reviewed the entire file, including the transcript of the Hearing, and finds that the Carrier adduced sufficient evidence to show that the Claimant was sleeping on the job on October 3, 1990. There is, however, conflicting evidence as to whether the Superintendent gave the Claimant an assurance that he would not reveal the incident to anyone else. The Claimant asserts that the Superintendent did give him that assurance; the

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Superintendent denies it. As has been established in various decisions of the Board involving disciplinary proceedings, the Board cannot and will not weigh conflicting evidence, attempt to resolve conflicting evidence, or reverse a finding merely because of the presence of contradictory testimony at an investigative Hearing.

The Board finds that the Carrier met its burden of proof in this instance and that there has been no demonstrated abuse of discretion on its part in assessing discipline. Sleeping on the job is a serious infraction, notwithstanding the reasons for it, and the 10-day suspension was not excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of January 1993.