

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12611
Docket No. 12529
93-2-92-2-61

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk and Western Railway Company without justification disciplined Dumper Operator R. C. Herring of Lambert's Point Coal Piers, Norfolk, Virginia when the dismissed Mr. Herring from all service with the Carrier as a result of an investigation that was held on June 3, 1991.
2. Accordingly, the Norfolk and Western Railway Company be ordered to return Mr. Herring to all service with the Carrier; that he be afforded all back pay; that he be accredited all lost time towards his accumulation of seniority and vacation requirements; that all of his medical bills incurred while dismissed be paid in full by the Carrier; that Mr. Herring in essence, be made whole by the Carrier and that all records of this investigation be removed from his personnel files."

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 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.

Subsequent to an investigation, the Claimant was dismissed from the service because he was asleep while on duty. The Board finds that the Carrier had sufficient evidence to show that the Claimant was sleeping as charged by the Carrier.

Four Carrier officials testified at the hearing held on this claim. Each stated that they observed the Claimant in a sleeping-like posture. Testimony adduced at the hearing also shows that, when someone spoke to the Claimant, he reacted in an abrupt and startled fashion. This is further indication that he was asleep.

With respect to the discipline assessed by the Carrier, we find the time out of service is sufficient discipline, under all the circumstances. The Claimant should understand that further serious infractions may properly lead to his permanent dismissal.

The Claimant is to be restored to the service with seniority and other rights unimpaired, but without back pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of November 1993.