

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12746
Docket No. 12701
94-2-93-2-62

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM:

- "(1) That under the current agreement and the Illinois Central Gulf Railroad Schedule of Rules, the Carrier unjustly dismissed Machinist Hezekiah M. Thompson from service effective May 1, 1992.
- (2) Accordingly, the Illinois Central Gulf Railroad compensate H. M. Thompson for payment of all lost wages while dismissed from service effective May 1, 1992 including all benefits, vacation, seniority rights and the removal of this incident from his personal records."

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 employee 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 were given due notice of hearing thereon.

At the time of the incident that gave rise to this case, Claimant was employed as a Machinist at Carrier's Woodcrest Repair Facility. On March 20, 1992, Claimant was found by two Foremen sitting on the floor in the cab of Locomotive 6066 on Track No. 5 appearing to be asleep. On March 24, 1992, Claimant was notified to appear at an Investigation into the matter. He was charged with a violation of General Regulation Rule No. 5. That Rule reads as follows:

"5. ACTS OF DISHONESTY. Theft of company property or the property of co-workers, shippers, vendors, visitors and passengers, desertion from duty, willful neglect, gross carelessness, immorality, sleeping while on duty (laying or sitting in a slouched position with eyes closed, covered or concealed will be considered sleeping), making false reports or statements, concealments of facts concerning matters under investigation, or serious violations of the law are serious offenses normally considered dismissal offenses."

A Hearing in the matter was held on April 15, 1992. As a result of that Hearing, Claimant was found to have been sleeping on the job, in violation of Rule 5. He was dismissed from Carrier's service. In its notification to Claimant that he was dismissed, Carrier made mention of his poor past record.

This Board reviewed the record before it and considered the testimony of the parties at the Oral Hearing. The Board has concluded from this review that Claimant was guilty of a major Rule infraction, but that when the total facts are considered, dismissal from service is an excessive penalty.

The Board has observed that at no point in the record is it indicated that Claimant did not perform all of his assigned work. It appears that he and his coworker had finished a major job, changing out a set of main bearings on Locomotive 6066 on Track No. 5. Since it was toward the end of the day and no new work had been assigned, staying out of sight may have been acceptable to his first-line supervision.

Based on the facts of the instant case and in consideration of Claimant's total discipline record, the Board concludes that an appropriate penalty would be a long suspension. Carrier can make its point in this instance by returning Claimant to work on a last-chance basis, without pay for lost time or benefits. Claimant should also be put on notice that any future Rule infraction of any kind can result in his permanent dismissal from service. Claimant should consider this Award as an opportunity to take stock of his job performance and attendance and devote himself to achieving an outstanding record in each area. If he does not, he will most assuredly be permanently removed from service at some time in the future.

AWARD

Claim Sustained in accordance with the Findings.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.