

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13831

Docket No. 13723

05-2-03-2-66

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Sheet Metal Workers International Association

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. The Carrier violated the provisions of the current and controlling agreement when they improperly suspended Sheet Metal Worker Elmer Thompson from the service of the Union Pacific Railroad Company on May 5, 2003 as a result of an investigation conducted on April 17, 2003 at the Office of the Director Commuter Operations-Car Department, 412 N. Sacramento Blvd, Chicago, Illinois 60612.
2. That accordingly, the Carrier be required to compensate Mr. Thompson for all time lost, including Holiday Pay, overtime pay which may have been lost and any other benefits he may have been deprived due to his improper suspension.”

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.

The Claimant received a five day suspension for sleeping in a commuter car on March 5, 2003 while on duty at the California Avenue Maintenance Facility.

The investigation revealed that while inspecting cars on March 5, 2003, Manager C. Ambrose observed the Claimant and another employee, C. DeBose, sitting in the east end of a coach car in a resting position with their backs to the seats; no work was being performed and the Claimant's head was down with his chin on his chest. Ambrose observed the Claimant for four minutes and could not see the whites of his eyes; could not see the Claimant's eyes blink and the Claimant remained motionless. According to Ambrose, DeBose (who was doing the same thing and who was also disciplined — see Second Division Award 13829 awoke and called to the Claimant and the Claimant quickly snapped his head back, did not seem alert and appeared to be trying to get his bearings. Ambrose asked the Claimant three times where he was supposed to be working and the Claimant did not respond until the third question was asked.

The Claimant denies that he was sleeping.

Rule 1.11 concerning sleeping provides that "Employees reclined with their eyes closed will be in violation of this rule."

Substantial evidence supports the Carrier's determination that the Claimant was sleeping. Manager Ambrose's observations of the Claimant sufficiently show that the Claimant was sleeping while on duty in violation of the cited rule.

The Organization's arguments do not change the result. The Organization essentially argues that Ambrose should not be credited. Absent sufficient reason in the record for doing so, it is not the function of this Board to redetermine credibility. The Claimant's version was not credited. We find no reason in this record to set that determination aside.

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With respect to the amount of discipline imposed, we do not find that a five day suspension for the demonstrated misconduct was arbitrary.

The claim shall be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 1st day of April 2005.