Award No. 912
Docket No. 909

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for and in behalf of J. E. Lane, Jr., who is now, and for some years has been employed by the Atlantic Coast Line Railroad Company as a train porter operating out of Richmond, Virginia.

Because the Atlantic Coast Line Railroad Company did, on September 26, 1953, take disciplinary action against Train Porter Lane by giving him an actual suspension without pay of sixteen (16) days, which action was unjust, unreasonable, harsh, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Train Porter Lane to be cleared of such charge or charges as were placed against him upon which the sixteen (16) days penalty was premised, and for him to be reimbursed for the time lost (16 days) because of the above-mentioned suspension.

OPINION OF BOARD: This is a discipline case. Train Porter J. E. Lane, Jr., who entered Carrier's service on November 14, 1951, and who has been working off the "extra board", was found asleep while on duty on Train No. 76 running from Florence, South Carolina, to Richmond, Virginia, September 8, 1952. For this occurrence he received a sixteen-day suspension without pay. Organization contends the discipline is "unjust, unreasonable, harsh, arbitrary, and in abuse of the Company's discretion."

In progressing this claim on the property, Carrier offered a compromise settlement reducing the suspension by one-half. Claimant rejected same. Organization contends the compromise offered is proof the Carrier recognizes its disciplinary action as unjustified. Claimant concedes he fell asleep but alleges it was due to excessive hours on duty for several days prior to September 8; that passenger car in which he fell asleep was empty; and that he had already fully taken care of passengers in other cars assigned to him.

In reviewing Carrier's disciplinary action, this Board cannot properly substitute its judgment for that of Management. We are limited to ascertaining whether the evidence supports the charge against Claimant and whether, in assessing penalty, Carrier's action was arbitrary, capricious or in bad faith. Here it is undisputed that Claimant was asleep; that he was on duty and under pay. Fact that car in which Claimant was sitting was otherwise unoccupied is not material. We cannot quarrel with Carrier's assertion it was not permissible Claimant Lane to sleep.

The record discloses Claimant had worked an excessive number of hours during the immediately preceding period between September 1 and 8. As a Train and Mail Porter, Lane is not covered by the provisions of the Hours of Service Law. However, during this period he continued to be marked up on the extra board since he did not request to be off. He asserts he did not do so because past experience proved such a request to be fruitless. But during the previous month he had requested to be off on August 27 and the request was granted. Moreover, if Carrier had failed to call Lane when his name was first on the board, it properly could have been accused of violating the Agreement. Claimant has not shown he was compelled to continue working on pain of jeopardizing his job. Thus the Organization is really seeking the dispensation of leniency by this Board.

We do not find that Carrier's offer to compromise in this dispute is relevant here. Compromise offers are not admissible in law. We are not bound by legal rules of evidence, but there is good reason for us to follow the same path in a matter of this kind. The introduction or consideration of such evidence may impair future attempts at dispute settlement, thus converting the Board into a hindrance rather than an aid to the peaceful and speedy resolution of claims.

In summary, we find the evidence fully supports the charge and that Carrier's disciplinary action is not arbitrary, capricious or so excessive as to constitute bad faith.

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

The carrier and the employe 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.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary.

Dated at Chicago, Illinois, this 1st day of September, 1953.