

**Award No. 4981**

**Docket No. 4913**

**2-C&O-CM-'66**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
(Southern Region)**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the Current Agreement, Roscoe Lewis was unjustly dealt with when he was suspended from the service of the Chesapeake and Ohio Railway Company, Fostoria, Ohio on March 13, 1964 through March 31, 1964; fifteen (15) days.

2. That accordingly, the Carrier be ordered to compensate Carman Roscoe Lewis, fifteen (15) days, eight (8) hours each day beginning March 13, 1964; at the carman's applicable straight time rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** Carman Roscoe Lewis, hereinafter referred to as the claimant, is regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its yards at Fostoria, Ohio on the third shift as a car inspector, with a work week of Friday through Tuesday, rest days Wednesday and Thursday. The carrier's Fostoria Yards is an interchange point where cars are interchanged from other roads to the C&O lines, and cars are switched and repaired.

Under date of February 6, 1964 Carrier's General Car Foreman, Mr. F. R. Jahnke addressed the following letter to the Claimant:

“Walbridge, Ohio  
February 6, 1964  
206-1

Mr. Roscoe Lewis --

You are charged with having been found asleep on duty at approximately 1:15 A.M. Sunday February 2, 1964.

too severe for a first offense. The Board did not agree, and claim was denied.

### THIRD DIVISION AWARD 10440 (Referee Rose)

A crossing watchman was dismissed as a result of being asleep while on duty. Claim for reinstatement and reimbursement for wage loss was denied, the Opinion reading in part:

"It is argued in support of this claim that the charge against Claimant was not established by material and probative evidence. The transcript of the first investigation shows Claimant's denial that he was asleep on duty and the testimony of two supervisors, on personal knowledge, as to circumstances from which the conclusion was drawn that Claimant was asleep while on duty. Thus, Carrier's finding of Claimant's misconduct rests on circumstantial evidence and the resolution of conflicting factual testimony involving questions of credibility.

Circumstantial evidence is valid and sufficient to support a charge of wrongdoing. See Award 7657. In addition, **this Division will not weigh evidence and resolve credibility conflicts in discipline cases.** See Awards 8488, 7139, 4796. As a result, we cannot say on the record here that there is no support in the evidence for the Carrier's findings that Claimant was asleep while on duty and did not properly perform his duties. Manifestly, an employe who sleeps on his job is derelict in the performance of his duties." (Emphasis ours.)

### CONCLUSIONS

Carrier has amply shown that:

- (1) The weight of the evidence definitely established that Lewis was asleep on duty, as charged.
- (2) There is no support to the contention that the discipline should be reversed on the basis that the committee was not furnished a copy of the transcript. The record shows that the transcript was furnished to the committee.
- (3) Rule 35(b) does not require that the committee be furnished a transcript within a specified period of time.
- (4) The delay in furnishing the transcript was not prejudicial to Lewis' rights.
- (5) The imposition of 15 days suspension was not too severe in view of the seriousness of the offense.
- (6) Carrier's action was not arbitrary, capricious, or an abuse of discretion.

The claim is without merit and it should be declined.

**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 were given due notice of hearing thereon.

Claimant received a fifteen day suspension for being asleep on duty on February 2, 1964.

Carrier's findings are supported by Yardmaster Conrad's testimony that he found Claimant asleep on a bench in the inspectors' shanty at the time in question after having attempted without success to reach him by telephone on about eight occasions shortly before that time. Although Conrad's testimony is uncorroborated and vigorously denied by Claimant, we find it definite and credible and see no valid reason for rejecting it. Carrier is entitled to rely on the observations of its supervisory employes and there is nothing in the record to indicate that Conrad's testimony was prompted by any improper motive or bad faith. It is not this Board's function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible, though controverted, evidence.

Carrier should make every effort to avoid delay in furnishing a copy of the investigation to the accused employe's representative but the delay that occurred here, while regrettable, and to be avoided in the future, does not constitute reversible error under the facts of this case or justify setting aside the findings and discipline.

The fifteen day suspension is not excessive or unjust and the claim will be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1966.