

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13910  
Docket No. 13787  
06-2-05-2-40**

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

(National Conference of Firemen and Oilers

**PARTIES TO DISPUTE:** (

(Soo Line Railroad Company (Canadian Pacific  
( Railway-US

**STATEMENT OF CLAIM:**

- “1. Under the controlling Agreement Mr. Marvin Lewis, laborer, St. Paul, Minnesota was unjustly disciplined on December 27, 2004 with a ten (10) day suspension, following a hearing held on December 2, 2004.
2. That accordingly Soo Line Railroad Company (Canadian Pacific Railway-US) be ordered to remove any reference to the ten (10) day suspension from Mr. Lewis’ personal file and that he be paid for all time lost on account of this 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 was given a ten (10) day suspension for allegedly sleeping on the job as a result of a hearing held on December 2, 2004.

The Organization argued that in discipline cases the burden of proof rests on the Carrier, and the Carrier has not met the burden in this matter. The transcript shows that the Carrier claimed that the Claimant was asleep, however, all the supervisor stated was that the Claimant was reclining with his eyes shut and that he was "pretty much asleep." The Supervisor was viewing the Claimant from above. The Claimant stated that he was on lunch at that time, and there is nothing in the record that states that he was not at lunch. The Supervisor had plenty of time to get another witness, however, that did not occur. The Supervisor has only 18 months' experience. The record in this case shows that the Carrier has not proven its case, therefore, no discipline is warranted.

The Carrier argued that the Claimant had received a previous five (5) day suspension concerning performance issues. Although the Claimant alleges he was never asleep, he has the most to gain by not telling the truth. The Hearing Officer determined that it was the Supervisor's version of events that was the truthful account. It is clear that the Claimant accepted no responsibility for his actions. The Supervisor stated that he called out to the Claimant and ultimately wound up next to him.

The Carrier contends the Claimant testified that he was actively engaged in work and that he was wearing ear plugs. The record shows that the Claimant was indeed asleep and that the discipline meted out was lenient and in no way excessive. Therefore, the claim must be denied.

Upon complete review of the evidence, the Board finds that, at the very least, the Claimant was in a position where he was giving the appearance of sleeping. The appropriate rule states that employees who are in a reclined position with eyes closed will be considered in violation of this rule. Certainly, at the very least, the Claimant was in that type of position. There was no showing that the Supervisor was "out to get" the Claimant or that there was even a problem between the Supervisor and Claimant. The Board finds nothing in the record that would allow it to substitute its

judgement for that of the hearing officer who determined the credibility of the various witnesses. In addition, a ten (10) day suspension for such a violation is indeed lenient. Many carries would consider this a dismissible offense particularly in light of the Claimant's previous work record. Therefore, the Board finds that it has no option but to deny the claim.

Claim denied in accordance with the Findings.

**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 19th day of October 2006.