

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19985**
Docket Number CLX-20286

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Railway Express Agency, Incorporated

STATEMENT OF CLAIM: Claim of the District **Committee** of the Brotherhood. (Case No. 103) that:

(1) The Agreement governing hours of service and working conditions between the parties, effective January 1, 1967, was violated by the Agency at Jacksonville, Florida, when on February 3, 1971, **Employee** G. H. Jackson **was** held out of service pending investigation and was further violated when on February 11, he was notified by Operations Manager W. T. Espey that he was dismissed from service, effective February 3, 1971, as a result of the investigation held on Tuesday, February 9, 1971, being allegedly charged with violation of Rule **866(b)** of the Agency's General Rules and **Instructions** and charged specifically with having an accident at approximately **3:30** A.M., February 3, 1971 on Interstate 475 near Macon, Georgia, about one (1) mile north of Hartley Bridge exit while driving tractor 67080, pulling trailer No. **REXZ** 301016, causing an estimated damage of \$4,000 to the tractor, \$2,500 to the trailer and \$3,000 to the bridge, and;

(2) That Mr. G. H. Jackson shall be restored to service with seniority rights unimpaired. his record shall be cleared of the charges and he shall be compensated for all monetary loss of pay retroactive to February 3, 1971, and continuing thereafter until such time as he is restored to service with seniority rights unimpaired and his record cleared of the charges, and;

(3) Mr. Jackson shall be additionally compensated for any overtime which he would have received and any expense incurred by him due to the Agency canceling Health and Welfare Insurance Policy No. 303 with Blue Cross-Blue Shield Insurance Company and he having to assume premium **payments**.

OPINION OF BOARD: Claimant, a regularly assigned truck driver, was permanently dismissed in connection with a highway accident in **which** the tractor-trailer, operated by him, collided with a bridge-rail. The accident occurred on Interstate Highway **#475** near Macon, Georgia, and resulted in substantial damage to **the** tractor-trailer and the bridge. **After** hearing, the Carrier specifically found that claimant failed to obtain proper rest prior to the trip involving the accident and that his dozing off while driving caused the accident.

In protesting the discipline the Employees take the position that:

"1. Mr. G. H. Jackson did not receive a fair and impartial hearing per Rule 11.

- "2. The Agency prejudged guilt.
3. Agency's actions were arbitrary, capricious and **discriminatory** in assessing discipline.
4. Agency's dismissal of **employee** too severe.
5. In the event accident was caused by no sleep as alleged **by Agency**, then the Agency contributed to such accident account of noisy bunk room."

The record contains nothing to indicate an infringement of claimant's due process rights and, accordingly, we find no merit in the contentions set out in 1 and 2 above. The remaining contentions, 3, 4, and 5 above, raise the issue of whether Carrier contributed so materially to the accident as to render the discipline arbitrary and/or excessive. The hearing testimony showed beyond dispute that the **immediate** cause of the accident was that the claimant dozed off at about **3:30** a.m., February 3, 1971, while operating the tractor-trailer on -- interstate highway. The claimant contends, however, that, if his dozing off is the cause of the accident, the accident was contributed to by the noisy conditions in the bunkhouse provided by Carrier as a rest facility for its truck drivers. The noisy conditions of the bunkhouse, as a factual matter, are clearly established of record; such conditions had been complained about prior to this dispute and the Carrier should do whatever is necessary to provide a proper rest facility for its over-the-road drivers. In this case, however, the bunkhouse conditions cannot be said to have any causal connection with claimant's dozing off. He went on duty at 2 a.m. on February 3 and the accident occurred about an hour and a half later, at **3:30** a.m. Prior thereto he had been off duty for almost twelve hours, from 2 p.m., February 2, until 2 a.m., February 3. Yet, during this twelve hour span of time, by his own testimony he used the bunkhouse for only the first two of the twelve hours, from 2 to 4 p.m. during daylight hours of February 2. He then left the bunkhouse in a borrowed automobile, got lost, and did not return to the bunkhouse until **1:30** a.m. on February 3. Thus, viewed in its most favorable Light, claimant's own testimony puts him voluntarily away from the bunkhouse for about nine and a half (9 1/2) hours immediately before going on duty at 2 a.m. on February 3. Accordingly, his Lack of rest was attributable to his own actions and there is no basis for concluding that Carrier's action respecting the bunkhouse contributed to the accident.

In view of the foregoing, and on the whole record, we must conclude **that the** finding of guilt is supported by substantial evidence and that there is no basis for disturbing the discipline. Award 13179 (**Dorsey**). We shall therefore deny the claim.

FINDINGS: The **Third** Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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That the Carrier and the **Employees involved** in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment **Board** has Jurisdiction over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied.

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

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **12th** day of **October 1973**.