

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20027
Docket Number CL-20104

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Division)
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Transportation-Communication** Division, **BRAC**, on the Norfolk and Western Railway Company, Lake Region, that:

1. Carrier violated the terms of the Telegraphers' Agreement when on July 20, 1971, it suspended from it's service claimant Mrs. F. J. Singer, for fifteen days without just reason or cause; and

2. Carrier shall, as a result, be required to clear her record of the charge, and to compensate her for eight hours pay for each day withheld from service, and pay interest at one per cent per month on the total sum due until paid in full.

OPINION OF BOARD: Claimant, the regularly assigned Third Shift Telegrapher at Carrier's Canton Yard, Canton, Ohio, was charged with sleeping on duty at or about **4:10** a.m., Tuesday, June 29, 1971. Following hearing and findings of guilt, the Carrier assessed discipline of fifteen (15) days actual **suspension**.

The Employees protest the discipline on the grounds that: (1) Carrier's Rule 427 (a) defines certain appearances as being asleep (e.g., being "in a slouched position with eyes closed") when such may not actually be the case; (2) claimant's due process rights were violated, in that the same official preferred the charges, conducted the hearing, and assessed the discipline; and (3) the Carrier's evidence does not support the findings of guilt and/or discipline. The Carrier's position is that the discipline is supported by the record and that the claim should be denied.

The Employees' first contention, which apparently attacks the reasonableness of Rule 427 (a), was not put in issue in the hearing or elsewhere on the property and, **consequently**, we shall not consider the issue here. As regards the Employees' second **contention**, many prior rulings of this Board have found no due process deficiency in the mere fact that a single official serves the multiple functions which obtain in this case. Award 9322.

The Employees' third contention requires a review of the hearing record to determine whether Carrier's action is supported by substantial evidence. Two Carrier witnesses, Assistant Trainmaster **Tobias** and Road Foreman of Engines **W. W. Peery**, testified that, at about 4:05 a.m. on the date in question, they had occasion to observe Claimant in the telegraph office, sitting in a chair asleep for about 15 to 20 minutes. After entering the office, Mr. **Tobias** asked claimant if she had been asleep. Both he and Mr. **Peery** said Claimant replied that "I might have dozed off". Claimant emphatically denied both that she had been asleep and that she had admitted to possibly dozing off. She stated that she merely said "Was I?" in reply to Mr. **Tobias**' question. However, she acknowledged that she did lay her head on the desk for a few minutes; this, she explained, was due to nausea from poor ventilation in the office, but the record shows that she did not mention her nausea to Mr. **Tobias** when he asked if she had been sleeping. From this review of the evidence, it is clear that the evidence raised a credibility issue which Carrier resolved against Claimant. On the whole record we find no basis on which to disturb that determination and we also conclude that the findings of guilt are supported by substantial evidence of record. We shall 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;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.