

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21708
Docket Number MW-21779

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(St. Louis-San Francisco **Railway Company**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The discipline of **Trackman** H. Richard for alleged 'violation of Rules **176, 177 and 189**' was without just and sufficient cause and on the basis of unproven charges (System File B-1469).

(2) The **claimant's personal** record be cleared of the charges placed **against** him and reimbursement be **made** for **all wage** loss suffered **all** in accordance with Rule 1(d) of Article 4.

OPINION OF BOARD: This is a discipline dispute **in which** Claimant was dismissed for sleeping on the job and subsequently reinstated. The dispute turns on the question of whether or not there was sufficient evidence to support the Carrier's determination of guilt.

The record of the investigation reveals that **Claimant** denied he was asleep **on** the day in question, when he had **an** assignment to ride in a truck **and** watch the crossings out of the right side of the vehicle. He admitted that he was 'scooted down' **and** his **head** was back. Two witnesses testified that he was asleep, one indicating that he was hunched down **in** the seat with his hat over his eyes. This conflict in the **testimony** is not **within** our province to resolve, it must be **accomplished** by the **hearing** officer since it was a credibility issue. The **hearing** officer credited the two **company witnesses** and not Claimant. In view of that determination, there was sufficient evidence to support **Carrier's** conclusion of **Claimant's** guilt. The prior record of **Claimant** was properly considered in **determining** the measure of discipline to be **imposed**. There is no basis for overturning Carrier's decision in this case. The **Claim must be** denied.

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 BWRD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.

