

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22973  
Docket Number CL-23086

A. Robert Lowry, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employee  
PARTIES TO DISPUTE: (  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (668845)  
that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, by dismissing Mr. Robert Hack from service following investigation held August 31, 1978.

2. Carrier shall reinstate Claimant Hack to his position and reimburse Claimant for any lost wages.

3. Carrier shall also clear Claimant's record of all allegations surrounding this dismissal.

OPINION OF BOARD: In the early afternoon of August 9, 1978, Mr. Robert Hack, the claimant, during his assigned work hours was found in the lavatory sound asleep snoring. The Carrier by letter of August 14, 1978, charged claimant as follows:

"Conduct unbecoming an employee in that you were found sleeping while on duty at 1:55 P.M. on August 9, 1978."

Se was notified to appear at a formal investigation on August 23, 1978, to develop the facts and place his responsibility, if any, concerning these charges. He was properly notified under the rules of the agreement of his rights to representation and to provide witnesses. The formal investigation, after an agreed upon postponement, was held on August 31, 1978. A copy of the transcript of the investigation was made a part of the record.

The Carrier produced competent evidence that claimant was asleep snoring loudly in the lavatory while on duty.

Claimant produced a statement from a Doctor Romero indicating that he had given him Donnatal and Etrafon which would cause him to become drowsy. Claimant had not informed his supervisor that he was taking such medication

which would affect him in this **manner**. Claimant testified that he had been taking this medication and that he felt **drowsy** before going to the rest room. He did not recall what **time** he went **into** the rest room nor could he remember being asleep but stated he **undoubtedly** was; **acquiescing** to his guilt of the charges.

**Inasmuch** as the claimant did not produce any witnesses, the Board **must** rely on the Hearing Officer's determination of **the** credibility of his testimony. The Board **upon** careful **examination** of the entire record concludes **claimant** was guilty as charged. **We must look to the** claimant's record, which was clearly presented in the investigation, to determine if the **punishment** fits the crime.

The record follows:

**In January 1975** claimant's supervisors **counseled him about his** tardiness and **absenteeism** and **warned** him future abuses would jeopardize his employment. During the period between August 12, 1974, and January 14, 1975, he was late 10 hours and 42 minutes; absent from duty 177 **hours** 25 minutes account sickness and family sickness; **appointments** 1 hour 30 minutes; personal business hours 2 **minutes** and **military** 8 hours; a total of **211 hours** and 39 **minutes** absent from his job.

In April 1975 he was **suspended** for 90 days **account** late reporting and absences from work and other charges. He was again **counseled about** his deportment and **warned** that future abuses would result in **more** severe discipline. Upon his **return to work from this suspension in August**, he was again **counseled** and **warned** that he **must** comply with the rules and regulations of the **company**. Upon return to employment he obtained an **assignment** in the Moncrief Yard office.

In October 1976, prior to **becoming** reassigned to a position in Customer and Freight Accounting, where he was employed **prior to** the 90 day suspension, claimant was **again** counseled by his supervisors about his past **deportment** and warned again that he **must** comply with all office rules and regulations.

On November 26, 1976, the **second month** after **being** reassigned to his **position in Customer and Freight Accounting**, another letter was written to claimant **confirming** the **counseling** given to him on the 24th concerning his deportment since **assignment** to his new position. The record **showed** he was late as follows:

"November 2	45 minutes
November 15	16 minutes
November 22	45 minutes
November 24	3:00 hours "

He was again warned in this **counseling session** that **any** further late reporting or failure to **follow** office rules and regulations would result in the application of **suitable discipline**.

On September 23, 1977, another letter **was** written **claimant** warning him that his **performance** was unsatisfactory in that **during** the period January through September he had been absent from his position, other than vacation, a total of 249 hours or 16.55% of the total time. **He** was late 23 times.

On November 9, 1977, **claimant** voluntarily accepted 30 days suspension for reporting late **and** for **leaving his work location without permission**.

The Board **finds** that the record clearly identifies the claimant as **being** chronically afflicted with absenteeism and a total lack of responsibility towards his position. **Based** on the **Carrier's** long history of patiently counseling this **employee** on his **deportment**, and Carrier's showing of leniency, the **Board** is **convinced** the **problem with claimant** is incurable. Therefore, the Board affirms the judgment of the Carrier in its **discipline and finds** it not excessive. The Carrier's action in **imposing** the **discipline** was justified **and** with sufficient cause. The **action** was not arbitrary, capricious or in bad faith. **There is no** proper basis for the **Board** to interfere with the discipline **imposed**.

**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**

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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. Paulson*  
Executive Secretary

Dated at Chicago, **Illinois, this** 12th day of September 1980.