

NATIONAL RAILROAD ADJUSTMENT BOARD

THIW DIVISION

Award Number 23361
Docket Number MW-23332

Josef P. Sirefman, Referee

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

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

(1) The dismissal of **Trackman-Driver** C. H. Jackson for alleged violation of **Rules** 176 and 177 was without just and sufficient cause and wholly disproportionate to the charge leveled against him /System File B-1729-1/.

(2) **Trackman-Driver** C. H. Jackson shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant Charles H. Jackson, Jr., a **Trackman-Driver**, Gang 321, with four and one-half years service with the Carrier was dismissed on March 8, 1979 for sleeping during a safety meeting that day in violation of **Rule** 176 reading in part "Employes who are negligent or indifferent to duty.. will not be retained in service", and in violation of **Rule** 177 which reads in part "Employes must be alert, devote themselves exclusively to the service, give their undivided attention to their duties during prescribed hours...".

An investigation was held on March 29, 1979. Examination of the record before the Board establishes that the Carrier had good cause to conclude that Claimant had been sleeping during the safety meeting on March 8, 1979. There was substantial evidence to sustain the Carrier's decision to discipline Claimant.

The penalty of dismissal is too severe under the **circumstances**. On **March** 29, 1979 the Carrier's Division Engineer wrote to the Organization:

"In spite of the fact that Mr. Jackson went to sleep at the previous safety meeting and that Mr. Jackson was discharged on August 22, 1977, for going to sleep on a **moving** motor car, I am willing to give him one more chance by reinstating him to service on **May** 8, 1979, with all rights intact, but without pay for lost time. Please advise if this acceptable."

This offer was rejected by Claimant. Accordingly it is our determination and we so order that Claimant be restored to service without pay for the time he has been out of service.

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 Employes involved in this dispute are respectively Carrier and Employes 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 discipline ~~was~~ excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.

