

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23999**
Docket Number SG-24106

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF mm: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

Appeal of the dismissal of **R. L. Bosco.** (System Docket **1502**)

OPINION OF BOARD: Claimant, **R. L. Bosco**, entered the service of the Carrier on July **7, 1976** and on March 10, 1980, was employed as a Signal Maintainer with headquarters at Harvard Tower, Cleveland, Ohio. Claimant's regular tour of duty is from **7:30 A.M. to 4:00 P.M.**

On March 10, 1980 at about **4:25 P.M.** Claimant Bosco was driving a company vehicle into a parking lot near the Tower, and struck an automobile belonging to another employe, **G. H. Gilan**, Operator at the Tower. He then entered the Tower and went to sleep on top of the Interlocking machine.

As a result of this incident the Claimant was dismissed from the Carrier's service. In a notice dated March **12, 1980** the Claimant was requested to appear for a trial on March 26, 1980 in connection with three charges. First, Claimant was in violation of Rule G, being in unfit condition to perform duties. Secondly, Claimant had violated Rule L, causing deliberate damage to a Conrail vehicle. Thirdly, Claimant was charged with violation of Rule C, sleeping or assuming an attitude of sleep while on duty.

Subsequent to the trial Claimant was notified he was dismissed in all capacities under the date of March 31, 1980. Claimant's discipline was appealed up to and including the Senior Director-Labor Relations. The Senior Director denied Claimant's appeal in a letter dated July 30, 1980.

Assistant Supervisor Hyttenhove testified that he arrived at the Harvard Tower at approximately **5:30 P.M.** to find the Claimant sleeping on top of the machine.. He further testified that Police Officer Drake woke up the Claimant by throwing a cup of water in Claimant's face after shaking him had been unsuccessful. Assistant Supervisor Hyttenhove further stated that Mr. Gilan told him that Claimant had struck his (Gilan) car.

Police Officer Drake corroborated Assistant Supervisor Hyttenhove's testimony that the Claimant was sleeping and that they could smell alcoholic beverage on the claimant's person. Drake also testified that he thought the Claimant was drunk.

Extra Block Operator Wenneman testified that the Claimant fell asleep and that the Claimant was rather dazed and fell backwards as though in a stupor. Further, he stated that he saw Claimant hit Mr. Gilan's car.

Carrier contends that the Claimant admits that he was involved in the accident and that he had fallen asleep. **Claimant did maintain, however, that he had not been drinking.**

Carrier maintains that it is not necessary to employ an expert to determine accurately when a person is under the influence of intoxicants but only offer substantial evidence in support thereof, (First Division Awards 13142 and 19891; Third Division Awards 6012, 10049, 10355).

Carrier maintains that the Claimant was on duty at the time of the occurrence. Claimant was returning to his headquarters at the time of the accident and **had not yet marked off duty.** Also, as a result of the accident, Claimant was required to remain on duty until such time as an accident report was completed. **Thirdly,** it was established that Claimant did not drink anything from the time of the accident until he was taken out of service and therefore Claimant must have imbibed while he was on duty and before he returned to his headquarters point.

Carrier maintains that a violation of Rule G is sufficient cause for dismissal (First Division Awards 13006 and 20442; Second Division Award 4552; Third Division Awards 15184 and 14442; Fourth Division Award 1086).

Carrier also took into consideration Claimant's past discipline record when determining the amount of discipline to be assessed. In slightly less than four (4) years of service the Claimant had been assessed discipline for tardiness, for unauthorized extension of lunch period and conduct unbecoming an employe and had received eight (8) verbal or written warnings concerning absenteeism or tardiness.

The Organization maintains that Claimant's tour of duty was from 7:30 A.M. to 4:00 P.M. and therefore Claimant was off duty at the time of the incident on March 10, 1980 at approximately 4:25 P.M. Further the Claimant did not request any overtime until he was detained by Assistant Supervisor Hyttenhove and Police Officer Drake. Therefore it was not clearly established that the Claimant was on duty at the time of the alleged occurrences.

Organization also asserts that the Carrier did not prove that the Claimant had used alcoholic beverages and that the Carrier must prove its case in discipline cases (First Division Award No. 20834; Second Division Award No. 6698; Third Division Award No. 13306, Fourth Division Award No. 2555).

Also the Organization contends that Rule L concerns "deliberate damage" to company property and there was no evidence that the damage to the vehicle was "deliberate."

Organization maintains that if it is determined that the Claimant was properly on duty and under pay then the charge of sleeping would stand. But this would not be so major in nature to warrant dismissal. Therefore, the discipline should be reduced to a period of suspension under Rule Enot to exceed sixty (60) days and Claimant should be paid for all other time held out of service.

Upon a careful consideration of the record in this matter, the Board concludes that there is substantial evidence in the record to support the charge. The Board also notes that there is a question of a-edibility concerning Claimant's sobriety. It is not the Board's function to determine questions of credibility, therefore the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, end upon the whole record and all the evidence, finds and holds:

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: Acting Executive Secretary
Rational Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of September 1982.