

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24365
Docket Number cL-24250

Edward M. Hogan, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
{Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9497)
that :

Carrier violated the Agreement at Atlanta, Georgia, when on February 29, 1980, it dismissed Ms. J. A. Webster, Data Input Operator, on a charge of sleeping on duty.

For this violation, Carrier shall restore Ms. J. A. Webster to service with all rights **unimpaired** and compensate her for all **time** lost, **commencing** February 29, 1980, and continuing until such restoration has been accomplished.

OPINION OF BOARD: **Claimant** was dismissed from the service of the Carrier on February 29, 1980. She had been charged by the Carrier with sleeping while on duty. An investigation was requested by the Organization to determine the propriety of the assessed discipline. **The** investigation was conducted on March 14, 1980, and the previously imposed discipline of dismissal was confirmed.

The **Organization** claims that the conduct of the bearing was arbitrary and capricious in that **no** fair and impartial hearing was conducted insofar as the Claimant's entire **work** record was introduced at the investigation. **The Claimant** contends that the record **was** introduced to prejudice the hearing. A related contention of the Claimant is that the Carrier did not meet its burden of proof **in** substantiating the **charges against** the Claimant.

We cannot agree with the issues raised by the Claimant. It **has** been well-settled by this Board that the scope of our review is limited. We are not the trier-of-fact; we cannot substitute our judgment over that of **the** hearing officer. **Furthermore**, absent a clear abuse of discretion, arbitrary or capricious behavior on the part of the hearing officer which would so prejudice a Claimant's case, we must uphold the findings-of-fact as adduced at the hearing. (See **Third** Division Awards **14700** and **10571**).

We must also address the issue as to whether the **discipline** imposed was reasonable given the circumstances. Sleeping **while on** duty has been **long** held to be a "dismissible offense." (Third Division Awards **12811** and **10440**). **The** very safety of **not** only the Carrier, but also fellow employees of the Claimant depends **upon** a work place where all **employees** are **alert** and certainly awake. To permit or condone otherwise would permit serious safety hazards in the industry. **This** cannot be permitted or allowed. Therefore, we find that the discipline imposed upon the Claimant to be reasonable.

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: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, **this 13th day of May 1983.**

