

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24791
Docket **Number** MW-24432

Edward M. Hogan, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Bridge Tender C. E. Burgess, Jr. for sleeping on duty was arbitrary and an abuse of justice and discretion by the Carrier (System File **C-4(13)-CEB/12-39(80-46) G**).

(2) Bridge **Tender** C. E. Burgess, Jr. shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for **all** wage loss suffered."

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on April 29, 1980, following a formal investigation held on April 9, 1980, on the charges of violations of General Rule 15 and portions of General Rule 18 regarding insubordination, sleeping on duty and incompetency. Claimant further was charged with violations of portions of Operating Rule G-1 regarding insubordination, sleeping on duty and assuming a reclining position conducive to sleeping, and incompetency, and willful neglect of his duties. These charges **were** the result of an incident that occurred on February 20, 1980, when a train was unable to proceed across a bridge because of Claimant's alleged failure to properly **signal** the train. In short, the Claimant admitted that he **was** in somnolent state due to an illness which required him to **ingest** medication given **to** him by his personal physician.

The Organization contends that because the **Claimant** attempted to disregard his physical and mental condition so that he could perform his duties as a **responsible employe**, he was not guilty of willful neglect and insubordination. The Organization further **contends** that the Carrier has failed to meet its burden of proof with respect to proving the charges as alleged. Lastly, the Organization argues that dismissal, under the circumstances presented in this dispute, was arbitrary **and** an abuse of justice and discretion by the **Carrier** (citing Awards 2813, 6074, 10582, 11556, 14120, 14439, 14479 and 16166.).

The Carrier responds that the Claimant admitted that he was sleeping while on duty at the formal investigation, that this was a particularly serious violation of the rules as charged because the Claimant's duties involved movement of trains, and the Claimant's actions **cannot** be tolerated as **they** presented considerable danger to the train crew. Secondly, **the** Carrier argues that there is no justification for disturbing the discipline assessed, and that this Board should not substitute its judgment for that of the hearing officer.

~~We~~ cannot concur with the position as advocated by the **Organization**. There is no question that sleeping while on duty is a serious, and dismissable offense. Referee **LaRocco**, in Second Division Award 8529, confirms the seriousness by which this, and other, Divisions of this Board hold sleeping on duty:

"Sleeping while on duty is a serious offense. The Carrier must rightfully rely on employees, stationed throughout a large railroad yard, to vigilantly remain on duty during shifts. Second Division Award No. 8137 (**Scearce**). Thus the Carrier acted reasonably in dismissing the Claimant and we cannot disturb the carrier's judgment in this case.

This Board has consistently held that it will not substitute its judgment for that of the hearing officer, absent evidence of arbitrary or capricious behavior or an abuse of managerial discretion. Referee **Rohman**, in Third Division Award 14700, states:

'In view of the Claimant's own admissions at the investigation, this Board would be usurping its powers were it to substitute its judgment for that of the Carrier.'

Furthermore, Claimant had been previously suspended for thirty days for the same offense less than one month prior to this incident. It is also noted that the Claimant had little more than one year of service with the Carrier.

The seriousness for which this Board views sleeping while on duty cannot be understated. The safe operation of a railroad demands that all employes, for their own protection as well as the protection of fellow employees and the public, remain alert while on duty. (See Also Second Division Awards 7869, 8433, and 8529; Third Division Awards 20967, 21377 and 12811.).

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.

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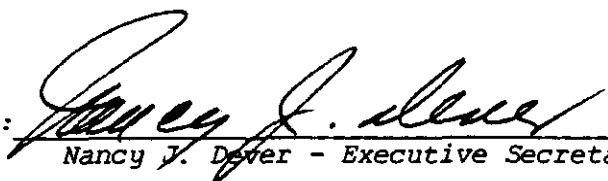
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984